REPORTS

OF

CASES

ARGUED and ADJUDGED in the COURTS of

KING's BENCH

AND

COMMON PLEAS,

In the REIGNS of

The late King *William*, Queen *Anne*, King *George* the Firſt, and King *George* the Second.

Taken and collected

By the Right Honourable *ROBERT* Lord *RAYMOND*, late Lord Chief Juſtice of the COURT of KING's BENCH.

VOL. III.

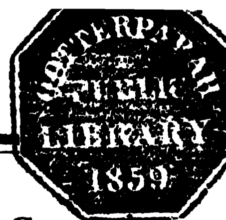
CONTAINING THE ENTRIES OF PLEADINGS TO THE CASES COMPREHENDED IN THE TWO FORMER VOLUMES.

Publiſhed by GEORGE WILSON, Eſq; Serjeant at Law.

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M,DCC.XCII.



PLEADINGS

TO

CASES

In Lord Raymond's Reports.

Pleas before the Lord the King at Westminster *of* Easter *Term in the thirteenth Year of the Reign of* William *the Third, King of* England, &c.

West, Mayor of Banbury, *against* West. *Ld. Raym.* 674.

Declaration for a false return of a mandamus.

Middlesex, (to wit) BE it remembered that heretofore, to wit, in the term of the *Holy Trinity* last past before the lord the king at *Westminster* came *Samuel West*, gentleman, mayor of the borough of *Banbury* in the county of *Oxford*, by *James Long* his attorney, and brought here into the court of the said lord the king then there his certain bill against *John West* in the custody of the marshal, &c. in a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Middlesex*, to wit, *Samuel West*, gentleman, mayor of the borough of *Banbury* in the county of *Oxford*, complains of *John West* in the custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas the borough of *Banbury* in the county of *Oxford* aforesaid is an ancient borough, and in the same borough for many years now last past there hath

 been,

been, and yet continues to be a mayor of the same borough yearly chosen: and whereas all the charters, books, records, muniments and ensigns of magistracy of the said borough of *Banbury*, do belong and appertain, and for divers years now last past have belonged and appertained to the place and office of the mayor of the said borough: and also whereas the said *Samuel West* lately before the feast of Saint *Michael* the archangel, to wit, on *Monday* the fourth day of *September* (being the first *Monday* in the month of *September*) in the eleventh year of the reign of the lord *William* the third, now king of *England*, &c. at *Banbury* aforesaid in the county of *Oxford* aforesaid was duly elected, and on the same feast of Saint *Michael* the archangel was duly sworn and admitted into the place and office of mayor of the borough of *Banbury* aforesaid to be continued in that office from the same feast of Saint *Michael* the archangel for one whole year from thence next following; and by reason thereof, the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid belong and appertain to the said *Samuel West*, and ought to be, and remain in his custody during the whole time of his mayoralty there: and whereas on the thirtieth day of *September* in the eleventh year abovesaid, and continually afterwards hitherto, all the charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid, which belong and appertain to the place and office of mayor of the same borough, were and yet are in the custody and possession of the said *John West* at *Banbury* aforesaid in the county of *Oxford* aforesaid, and the said *Samuel West* on the said thirtieth day of *September* in the eleventh year aforesaid there requested the said *John West* to deliver the said charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid to the said *Samuel West*: nevertheless the said *John West* then and there and often afterwards unduly, unrighteously and unjustly and injuriously refused to deliver those charters, books, records, muniments and ensigns of magistracy to the said *Samuel West*, to the no small damage and grievance of him the said *Samuel West*: and thereupon the said *Samuel West* for the more speedy obtaining the said charters, books, records, muniments, and ensigns of magistracy of the borough of *Banbury* aforesaid afterwards, to wit, on the seventeenth day of *April* in the term of *Easter* in the twelfth year of the reign of the lord the now king, obtained and prosecuted from the court of the said lord the king before the king himself (the same court being then at *Westminster* in the county of *Middlesex*)

a certain writ of the said lord the king of *pluries mandamus* directed to the aforesaid *John West*, by which said writ reciting, that whereas there were then lately delivered into, and then remained in the custody of the said *John West* divers charters, books, records, muniments and ensigns of magistracy belonging and appertaining to the borough of *Banbury* aforesaid in the said county of *Oxford*, which ought to be delivered to the said *Samuel West* for the use and benefit of the same borough; and the said *Samuel*, then mayor of the borough aforesaid, often demanded of the said *John West* the aforesaid charters, books, records, muniments and ensigns of magistracy belonging and appertaining to the borough aforesaid for the use and benefit of the said borough; and the said *John West* well knowing but little regarding the premisses, unjustly detained the said charters, books, records, muniments and ensigns of magistracy belonging to the said borough in his custody and power, and hath unjustly refused to deliver the same charters, books, records, muniments and ensigns of magistracy aforesaid to the said *Samuel*, in contempt of the said lord the king, and to the no small damage and grievance of him the said *Samuel*, and to the manifest injury of his state, as by his complaint the said lord the king hath received information; therefore the said lord the king willing that due and speedy justice should be done in that behalf to the aforesaid *Samuel*, as was just, commanded the said *John West*, as he had several times commanded him, firmly enjoining him that immediately after the receipt of that writ he should deliver or cause to be delivered all and singular the charters, books, records, muniments and ensigns of magistracy belonging to the borough aforesaid, and being in his custody, to the said *Samuel West* for the use and benefit of the same borough, or should signify to the said lord the king cause to the contrary, lest through the default of the said *John West* complaint should again come to him the said lord the king; and in what manner the said *John West* should execute that command of the said lord the king he should make to appear to the said lord the king at *Westminster* on *Friday* next after three weeks of *Easter* then next following, under the penalty of eighty pounds, (remitting the said writ of the said lord the king to him); which said writ afterwards and before the return thereof, to wit, on the 19th day of *April* in the said twelfth year of the reign of the said lord the now king was delivered to the said *John West* to be executed in form of law, to wit, at *Westminster* aforesaid in the said county of

The writ of *mandamus*

Middlesex; nevertheless the said *John West* the said charters, books, records, muniments and ensigns of magistracy belonging to the said borough of *Banbury* hath not delivered, or caused to be delivered to the said *Samuel West*, according to the exigency of the said writ: but the said *John West* well knowing the premisses, and further contriving and falsely and maliciously intending to aggrieve him the said *Samuel West* in this behalf, and to deprive him of the custody and use of the said charters, books, records, muniments and ensigns of magistracy belonging to the said borough of *Banbury* through the whole time of his mayoralty there, on the day of the return of the said writ, to wit, the said *Friday* next after three weeks of *Easter* in the aforesaid 12th year of the reign of the said lord the now king falsely and maliciously returned to the said lord the now king in the court of him the said lord the king before the king himself (the same court being then at *Westminster* in the said county of *Middlesex*) his answer to the writ aforesaid; by which said answer so returned the said *John West* certified to the said lord the king, that divers records and ensigns of magistracy of the borough of *Banbury* aforesaid were delivered to him the said *John West* as mayor of the said borough, and by reason thereof came to the hands of him the said *John West*, and then remained in his custody upon that occasion, and not otherwise, for the use and benefit of the said borough, according to the custom of the said borough used from time whereof the memory of man is not to the contrary; and that no charters, books or muniments in the said writ named, which by reason of the office of him the said *John West*, were ever in his custody, ought to be delivered to the said *Samuel West*: and the said *John West* further certified, that the said *Samuel West* in the said writ mentioned, at the time of the date, or the teste, or the issuing of the said writ, in the said writ mentioned, or of any of them, was not nor ever afterwards was, nor then existed, mayor of the borough of *Banbury* aforesaid, and for that reason he neither could nor ought to deliver the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, or any of them to the said *Samuel West*, as by the said writ and the return thereof affiled and remaining upon record in the said court of the said lord the now king, before the king himself at *Westminster* aforesaid, more fully appears; where in truth and in fact he the said *Samuel West* in manner and form aforesaid was duly chosen, sworn and admitted into the place and office of mayor of the borough of *Banbury* aforesaid in the

The return.

Averment that the plaintiff was duly chosen mayor.

the county aforesaid, as by the said writ is above supposed, to wit, at *Banbury* aforesaid in the county of *Oxford* aforesaid; and that he the said *Samuel* before the time of the date and issuing forth of any writ of *mandamus* in this behalf, to wit, on the said 30th day of *September* in the 11th year of the reign of the said lord, the now king abovesaid, was and continually afterwards hitherto hath been and yet is mayor of the borough of *Banbury* aforesaid, to wit, at *Banbury* aforesaid in the county of *Oxford* aforesaid; and by reason thereof the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, ought to be delivered to him the said *Samuel* as mayor of the borough aforesaid; and where in truth and in fact the said *John West*, neither at the time of the date, or of the issuing forth of any writ of *mandamus* by him the said *Samuel West* in this behalf obtained, nor at any time afterwards hitherto was or existed mayor of the borough of *Banbury* aforesaid; and where in truth and in fact the said *John West* at the time of the date, obtaining and issuing forth of the said writ of *mandamus* of him the said *Samuel West* in this behalf, and continually afterwards hitherto hath had and hath in his hands divers charters, books and muniments belonging to the said borough; by pretence of which said false return, and of the premisses, the said *Samuel West* is not only deprived of the custody and use of the said charters, books, records, muniments and ensigns of magistracy of the borough of *Banbury* aforesaid, and of his remedy for his obtaining the same, but also hath expended great sums of money in the obtaining and prosecution of the said writ of *mandamus*, and by occasion of the premisses, is very much injured, to the damage of him the said *Samuel West* of 400 *l.* And thereupon he brings suit, &c.

And that defendant was not mayor.

And now here at this day, to wit, *Wednesday* next after fifteen days of *Easter* in this said term, until which day the said *John* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* come as well the said *Samuel West* by his attorney aforesaid, as the said *John* by *Francis Hayes* his attorney: and the said *John* defends the force and injury when, &c. and saith, that the said *Samuel* ought not to have or maintain his said action thereof against him, because he saith, that the said *Samuel West* at the time of the date or teste, or issuing forth of the said writs, or of any of them, was not, nor at any time afterwards hitherto hath been or existed mayor of the borough of *Banbury* aforesaid in the county of *Oxford* aforesaid; by which he the said *John* in his answer

Imparlance.

Plea in bar.

to

to the writ aforesaid in the said declaration mentioned (among other things) hath returned and certified, that the said *Samuel West* in the said writ mentioned, at the time of the date or teste, or of the issuing forth of the said writs in the said writ mentioned, or of any of them, was not, nor at any time afterwards hath been, nor then existed, mayor of the borough of *Banbury* aforesaid, and for that reason he neither could nor ought to deliver the charters, books, records, muniments and ensigns of magistracy of the borough aforesaid, or any of them, to him the said *Samuel West*, as by the said declaration is supposed; and this the said *John* is ready to verify: wherefore he the said *John* prays judgment if he the said *Samuel* ought to have or maintain his said action thereof against him, *&c.* And the said *Samuel* saith, that he by any thing by the said *John* above in pleading alledged ought not to be barred from having his said action against him the said *John*, because he says, that the said plea by the said *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to bar him the said *Samuel* from having his said action thereof against the said *John*; to which said plea he the said *Samuel* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *Samuel* prays judgment, and his damages by occasion of the said premisses, to be adjudged to him, *&c.*

Demurrer.

Joinder in demurrer.

And the said *John* saith, that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to bar him the said *Samuel* from having his said action against him the said *John West*; which said plea, and the matter in the same contained, he the said *John* is ready to verify and prove, as the court, *&c.* And because the said *Samuel* hath not answered to the said plea, nor hath hitherto in any manner denied it, he the said *John* as before prays judgment, and that the said *Samuel* may be barred from having his said action thereof against him the said *John*, *&c.* But because the court of the said lord the king now here is not yet advised to give judgment of and concerning the premisses, day thereupon is given to the parties aforesaid before the lord the king at *Westminster*, until next after to hear judgment of and concerning the premisses, for that the court of the said lord the king now here is not yet, *&c.*

Curia advisare vult.

Pleas

Pleas before the Lady the Queen at Westminster *of the Term of Saint* Michael *in the first Year of the Reign of our Lady* Ann *Queen of* England, *&c.*

Booth *against* Johnson. *Reported in* Ld. Raym. 838. *by the Name of* Gould *against* Johnson.

Writ of error.

England, (to wit,) THE lord *William* the third, late king of *England*, *&c.* sent to his right trusty and well beloved *Thomas Trevor*, knight, his chief justice of the bench, his writ close in these words, (to wit) *William* the third by the grace of God, of *England*, *Scotland*, *France*, and *Ireland* king, defender of the faith, *&c.* to his right trusty and well-beloved *Thomas Trevor*, knight, his chief justice of the bench, greeting: because in the record and process, and also in the giving of judgment of a plaint which was in our court before *Edward Nevill*, knight, and his companions, then our justices of the bench aforesaid, by our writ, between *Thomas Johnson* and *Mary* his wife, administratrix of the goods and chattels which were *Sylvanus Rowley*'s gentleman, who died intestate, as it is said, and *Ann Booth*, late of *Westminster* in the county of *Middlesex*, widow, of a plea of trespass upon the case, as it is said, manifest error hath intervened, to the great damage of her the said *Ann*, as we have received from her complaint: we willing that the error (if any there shall have been) to be corrected in due manner, and compleat and speedy justice to be done to the parties aforesaid in this behalf, command you, that if judgment thereof be given, then that you send the record and process aforesaid with all things touching the same, to us, under your seal, distinctly and openly, and this writ, so that we have them from the day of Saint *Michael* in three weeks, wheresoever we shall then be in *England*, that the said record and process being inspected, we may further do thereupon for the correcting the error, that which of right and according to the law and custom of our realm of *England* ought to be done. Witness *Thomas* archbishop of *Canterbury*, and the rest of the guardians and justices of the kingdom, at *Westminster* the 8th day of *July* in the 13th year of our reign.

Layton.

The

The Answer of Thomas Trevor, *Knight, the Chief Justice within mentioned.*

THE record and process of the plaint whereof mention is within made, with all things touching the same, I send before the lord the king wheresoever, &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

Thomas Trevor.

Pleas inrolled at Westminster *before* Edward Nevill, *Knight,* John Powell, *Knight, and* John Blencowe, *Knight, Justices of the Lord the King, of the Bench, of the Term of* Easter *in the thirteenth Year of the Reign of the Lord* William *the Third by the Grace of God, of* England, Scotland, France *and* Ireland *King, Defender of the Faith,* &c. Roll 358.

Action upon a special promise to pay for lodging, &c. of two children, by plaintiffs as administrators.

Middlesex, (to wit,) ANN *Booth* late of *Westminster* in the county aforesaid, widow, was attached to answer *Thomas Johnson* and *Mary* his wife, administratrix of the goods and chattels which were *Sylvanus Rowley*'s deceased, of a plea of trespass upon the case, &c. And whereupon the said *Thomas* and *Mary*, by *Charles Chambers* their attorney complain, that whereas the said *Ann* on the first day of *June* in the year of our Lord 1685, at *Westminster* in the county aforesaid, in consideration that the said *Sylvanus* in his life-time, at the special instance and request of the said *Ann*, would receive into his dwelling-house, situate in *High-downe* in the county of *Hertford*, one *Christopher Cripps*, a child of the said *Ann*, and one *William Cripps* another child of the said *Ann*, as guests, with the said *Sylvanus*, and would find and provide for the same *Christopher* and *William* meat, drink, washing and lodging, and all other things fitting, convenient and necessary, assumed upon herself, and to the said *Sylvanus* in his life-time then and there faithfully promised, that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* as much money as the said *Sylvanus* should reasonably deserve to have for the same, for such time as the said *Christopher Cripps* and *William Cripps* should remain as lodgers with the said *Sylvanus* in his said house, when she should be thereunto afterwards required: and the said *Thomas* and *Mary* in fact say, that the said *Sylvanus* in his life-time, confiding in the promise and under-

undertaking of the said *Ann* in form aforesaid made, afterwards to wit, on the 29th day of *September* in the year of our Lord 1685 aforesaid, received the said *Christopher Cripps*, a child of the said *Ann*, into his said house, and that the said *Christopher* remained in the said dwelling-house of him the said *Sylvanus* from the said 29th day of *September* in the year of our Lord 1685 aforesaid, for the space of six years then next following at *Highdowne* aforesaid: and that he the said *Sylvanus* in his life-time found and provided for the said *Christopher Cripps* meat, drink, washing and lodging, and all other things fitting and convenient and necessary for the whole time aforesaid, and that the said *Sylvanus* in his life-time afterwards, to wit, on the first day of *October* in the year of our Lord 1685 aforesaid, received the said *William Cripps*, the other child of her the said *Ann*, into his said house; and that the said *William* remained in the said dwelling-house of him the said *Sylvanus* from the said first day of *October* in the year of our Lord 1685 aforesaid, for the space of seven years then next following; and that he the said *Sylvanus* in his life-time found and provided for the said *William Cripps* meat, drink, washing and lodging, and all other things necessary and convenient for the whole time aforesaid: and they the said *Thomas* and *Mary* further in fact say, that the said *Sylvanus* in his life-time reasonably deserved to have eighty pounds of lawful money of *England* for the said meat, drink, washing and lodging, and other things fitting, necessary and convenient for the said *Christopher*, for the space of six years so as aforesaid found and provided; and that the said *Sylvanus* reasonably deserved to have other eighty pounds of the like lawful money of *England* for the said meat, drink, washing and lodging, and other things fitting, necessary and convenient for the said *William* for the space of seven years so as aforesaid found and provided, whereof the said *Ann* had notice. And also whereas the said *Ann* afterwards, to wit, on the first day of *April* in the year of our Lord 1695, at *Westminster* aforesaid, in consideration that the said *Sylvanus* in his life-time, at the special instance and request of the said *Ann* had found and provided for *Christopher Cripps* and *William Cripps*, certain children, of her the said *Ann*, other meat, drink, washing, lodging, apparel, and other necessaries, for the space of other six years then past, and at the like instance and request of her the said *Ann* had expended and laid out divers sums of money in the tuition and instruction of them the said *Christopher* and *William*, assumed upon herself, and to the said *Sylvanus* then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* so much money as he the said *Sylvanus* reasonably

reasonably deserved to have for the said meat, drink, washing, lodging, apparel, and other necessaries last mentioned, by the said *Sylvanus* for the said *Christopher* and *William* so as aforesaid found and provided, and also so much money as the said *Sylvanus* for the tuition and instruction of them the said *Christopher* and *William* had expended and laid out, when she should be thereunto afterward required: and the said *Thomas* and *Mary* in fact say, that the said *Sylvanus* in his life-time reasonably deserved to have one hundred pounds of lawful money of *England* for the said meat, drink, washing, lodging, apparel, and other necessaries by him the said *Sylvanus* in his life-time for the said *Christopher* and *William* for the space of time aforesaid last mentioned found and provided, as before is set forth; and that he the said *Sylvanus* in his life-time, for the tuition and instruction of them the said *Christopher* and *William*, expended and laid out another hundred pounds of the like lawful money, whereof the said *Ann* then and there had notice. And also whereas the said *Ann* afterwards, to wit, on the second day of *April* in the year of our Lord 1695 aforesaid, at *Westminster* aforesaid, was indebted to the said *Sylvanus* in his life-time in another hundred pounds of lawful money of *England*, for other meat, drink, washing and lodging, and other things fitting, necessary and convenient by the said *Sylvanus* in his life-time for the said *Christopher Cripps* and *William Cripps*, the children of her the said *Ann*, at the special instance and request of her the said *Ann*, for the space of other six years then past found and provided, and also for divers sums of money by the said *Sylvanus* for the said *Christopher* and *William* at the like instance and request of her the said *Ann*, before that time expended and laid out; and being thereof so indebted, the said *Ann* afterwards, to wit, on the same day and year at *Westminster* aforesaid, in consideration thereof assumed upon herself, and to the said *Sylvanus* in his life-time then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* the said one hundred pounds last mentioned, when she should be thereunto afterwards requested. And also whereas the said *Sylvanus* in his life-time, that is to say, on the third day of *April* in the year of our Lord 1695 abovesaid, at *Westminster* aforesaid, accounted together with the said *Ann* concerning divers sums of money to the said *Sylvanus* in his life-time by the said *Ann* owing and unpaid, and upon that account the said *Ann* was found in arrear towards the said *Sylvanus* in his life-time in forty pounds of lawful money of *England*; and being so found in arrear, the said *Ann* afterwards, to wit, on the same day

and

and year at *Westminster* aforesaid, in consideration thereof assumed upon herself, and to the said *Sylvanus* in his life-time then and there faithfully promised that she the said *Ann* would well and faithfully pay and satisfy to the said *Sylvanus* the said forty pounds, when she should be thereunto afterwards requested: nevertheless the said *Ann* not regarding her said several promises and undertakings made in manner aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Sylvanus* in his life-time, and the said *Thomas* and *Mary*, after the death of the said *Sylvanus*, the said several sums of money, or any part thereof, to the said *Sylvanus* in his life-time, or to the said *Mary* after the death of the said *Sylvanus* while she was sole, or to the said *Thomas* and *Mary* after the espousals between them celebrated, (to which said *Mary*, administration of all and singular the goods, rights and credits which were the said *Sylvanus*'s at the time of his death, by *George Barnardiston*, master of arts, commissary and official rightly and lawfully constituted in and through the archdeaconry of *Huntingdon*, on the 4th day of the month of *April* in the year of our Lord 1699, at *Westminster* aforesaid, after the death of him the said *Sylvanus*, according to due form of law was committed) hath not paid, or in any manner satisfied, (altho' to do this the said *Ann* by the said *Sylvanus* in his life-time, to wit, the 4th day of *April* in the year of our Lord 1695 abovesaid, and by the said *Mary* after the death of the said *Sylvanus* while she was sole, to wit, on the 10th day of *April* in the year of our Lord 1699 abovesaid, and by the said *Thomas* and *Mary* after the espousals between them celebrated, to wit, on the first day of *January* in the year of our Lord 1699 abovesaid, at *Westminster* aforesaid, was requested,) but the same to the said *Sylvanus* in his life-time, or to the said *Mary* after the death of the said *Sylvanus* while she was sole, or to the said *Thomas* and *Mary*, after the espousals between them celebrated, to pay, or in any way satisfy hath wholly refused, and yet doth refuse, to the damage of the said *Thomas* and *Mary* of fifty pounds; and thereupon they bring suit, &c. And the said *Thomas* and *Mary* bring here into court the letters of administration of the said official, which testify the commission of administration aforesaid, in form aforesaid.

Plea did not promise within six years.

And the said *Ann* by *John Smith* her attorney comes and defends the force and injury when, &c. and saith, that the said *Thomas* and *Mary* ought not to have their said action thereof against her, because she saith, that she did not assume upon herself at any time within six years next before the day

day of obtaining the original writ, of them the said *Thomas* and *Mary*, in manner and form as the said *Thomas* and *Mary* above complain against her; and this she is ready to verify; wherefore she prays judgment if the said *Thomas* and *Mary* ought to have their said action thereof against her, *&c.*

Replication. That the action accrued to plaintiffs within six years.

And the said *Thomas* and *Mary* say, that they by any thing before by the said *Ann* in pleading alledged ought not to be barred from having their said action against the said *Ann*, because they say, that within six years now last past, to wit, on the said 4th day of *April* in the year of our Lord 1696 abovesaid, the said administration to her the said *Mary* was in due manner committed in form aforesaid, to wit, at *Westminster* aforesaid, by which the said action accrued to them the said *Thomas* and *Mary* within six years; and this they are ready to verify: wherefore they pray judgment and their damages aforesaid by reason of the premisses, to be adjudged to them, *&c.*

Demurrer.

And the said *Ann* saith, that the plea of them the said *Thomas* and *Mary* above pleaded in reply is not sufficient in law for the said *Thomas* and *Mary* to have and maintain their said action against the said *Ann*; to which said plea in manner and form aforesaid pleaded the same *Ann* hath no necessity, neither is she bound by the law of the land in any manner to answer; and this she is ready to verify: wherefore she prays judgment, and that the said *Thomas* and *Mary* may be barred from having their said action against the said *Ann*, *&c.*

Joinder in demurrer.

And the said *Thomas* and *Mary* inasmuch as they have above in reply alledged sufficient matter in law to have and maintain their said action against the said *Ann*, which they are ready to verify; which said matter the said *Ann* doth not deny, nor hath in any manner answered it, but wholly refuses to admit that averment, they as before pray judgment and their damages, by reason of the premisses, to be adjudged to them, *&c.* And hereupon the premisses, being seen, and by the justices here fully understood, it seemeth to the same justices here that the said plea of the said *Thomas* and *Mary* above pleaded in reply is sufficient in law for them the said *Thomas* and *Mary* to have and maintain their said action against the said *Ann*, as they the said *Thomas* and *Mary* have above alledged; wherefore the said *Thomas* and *Mary* ought to recover their damages by reason of the premisses against the said *Ann*: but because it is unknown what damages the said *Thomas* and *Mary* have sustained by reason of the premisses, the sheriff is commanded, that by the oath of honest and lawful men of his bailiwick he diligently

Judgment for the plaintiff.

ligently inquire what damages the said *Thomas* and *Mary* have sustained, as well by reason of the premisses, as for their costs and charges by them about their suit in this behalf laid out; and the inquisition which, &c. that the sheriff do make to appear here on the morrow of the Holy Trinity, under the seal, &c. and the seals, &c. At which day here come the said *Thomas* and *Mary* by their said attorney, and the sheriff, to wit, *Robert Beachcroft*, knight, and *Henry Furnesse*, knight, now return here a certain inquisition taken before him at the *Hercules Pillars* in *Brook-street* in the county aforesaid, on the thirteenth day of *June* last past, by the oath of twelve, &c. by which it is found that the said *Thomas* and *Mary* have sustained damages by reason of the non-performance of the said first promise, besides their costs and charges by them about their suit in this behalf laid out, to fifty-two pounds and one shilling, and also damages by reason of the non-performance of the rest of the promises aforesaid, besides their costs and charges as aforesaid laid out, to three pence, and for those costs and charges to twenty shillings: and hereupon the said *Thomas* and *Mary* freely here in court do remit to the said *Ann* forty and one shillings, parcel of the said fifty-two pounds and one shilling, upon the said first promise aforesaid by the said inquisition, in manner aforesaid above found, and the said three pence, upon the rest of the said promises by the said inquisition in manner aforesaid likewise found: therefore the said *Ann* is quit of the said forty and one shillings and three pence, &c. And the said *Thomas* and *Mary* pray judgment of the residue of the damages and of the costs and charges aforesaid by the said inquisition in manner aforesaid likewise found, and an increase thereof, to be adjudged to them, &c. Therefore it is considered that the said *Thomas* and *Mary* do recover against the said *Ann* fifty pounds, parcel of the said fifty-two pounds and one shilling, upon the said first promise by the inquisition aforesaid above found, and the said twenty shillings for their costs and charges by the same inquisition in manner aforesaid likewise found; and also twenty-six pounds to the said *Thomas* and *Mary*, at their request, for their costs and charges aforesaid by the court here, by way of increase adjudged; which said damages in the whole amount to seventy and seven pounds; and the said *Ann* in mercy, &c.

Writ of inquiry awarded.

Damages on the first count.

Damages on the rest of the counts.

Remittitur of part of damages.

Final judgment

Mercy.

Afterwards, to wit, on *Saturday* next after the octave of Saint *Martin* in this same term (before which day the said lord *William* the third, late king of *England*, &c. died) before our lady the queen at *Westminster* cometh the said *Ann Booth* by *John Buxton* her attorney, and saith, that in the record

Assignment of errors.

record and process aforesaid, and also in the giving the judgment aforesaid, there is manifest error in this, to wit, that where by the record aforesaid it appears that the judgment aforesaid, in the plea aforesaid given was given for the said *Thomas Johnson* and *Mary* his wife against the said *Ann Booth*, where by the law of the land of this kingdom of *England* judgment in the same plea ought to have been given for the said *Ann Booth* against the said *Thomas Johnson* and *Mary* his wife, therefore in that there is manifest error; and she prays that the judgment aforesaid for that error and others being in the record and process aforesaid may be reversed, annulled, and wholly holden for nought; and that the said *Ann* may be restored to all that she hath lost by occasion of the said judgment; and that the said *Thomas* and *Mary* may rejoin to the errors aforesaid, &c.

In nullo est erratum.

And the said *Thomas* and *Mary* by *John Lilly* their attorney come and immediately say, that neither in the record and process aforesaid, nor in the giving of the judgment aforesaid, is there any error; and pray that the court of our said lady the queen now here may proceed to the examination as well of the record and process aforesaid, as the matters aforesaid by her the said *Ann Booth* above assigned for error; and that the judgment aforesaid in all things may be affirmed: but because the court, &c.

Pleas before the Lady the Queen at Westminster *of the Term of Saint* Michael *in the first Year of the Reign of our Lady* Ann *Queen of* England, &c. Roll 313.

Bennet *against* Purcell. *Reported in* Ld. Raym. 848.

Action on the case by a captain against a colonel of a regiment for pay.

Middlesex, (to wit) BE it remembered, that on *Friday* next after three weeks of Saint *Michael* in this same term before our lady the queen at *Westminster* came *Joseph Bennet*, esq; by *Francis Hardy* his attorney, and brought into the court of our said lady the queen now here his certain bill against *Tobias Purcell*, esq; being in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit. *Middlesex*, to wit, *Joseph Bennet*, esq; complains of *Tobias Purcell*, esq; in the custody of the marshal of the *Marshalsea*

shalsea of our lady the queen, being before the queen herself, of a plea of trespass upon the case, for that, (to wit) that whereas he the said *Joseph* now is, and for divers years heretofore, to wit, in the time of *William* the third, late king of *England*, &c. hath been a captain, lawfully constituted and appointed by the said late king and our lady the now queen, to a certain company of their soldiers in the service of this kingdom, as well to order and govern, as to consult and appoint in military affairs, and other warlike necessaries arising and happening in battle and war; and by reason thereof hath had and been accustomed, and ought to have for himself, and on the behalf of such soldiers substituted and placed under him, certain several sums of money as wages, salaries and rewards for their respective services, usually paid to them by the day, or by the month, or to other military officers, to himself the said *Joseph*, and other such captains appointed to such uses and purposes as aforesaid, paid by our said lady the now queen and the said late king, or by such persons as by them have been and are appointed, deputed and authorised to act and pay such wages, salaries and rewards. And also whereas the said *Tobias* on the tenth day of *March* in the first year of the reign of our lady the now queen, was indebted to the said *Joseph* in seventy pounds of lawful money of *England*, for money of him the said *Joseph*, to himself as is aforesaid by reason of his said office, due and payable by him the said *Tobias* before that time, he being then an officer, commanding the said *Joseph* to wit, the colonel of the regiment in which he served under him as captain, received and had from the publick office appointed by the said late king to make such payments; and being so indebted, the said *Tobias* the same day and year at the parish of Saint *Martin in the Fields* in the county aforesaid, in consideration thereof assumed upon himself, and to the said *Joseph* then and there faithfully promised that he the said *Tobias* the same sum of money as aforesaid by him received well and faithfully would pay and satisfy; and also whereas the said *Tobias* on the day and year aforesaid was indebted to the said *Joseph* in other seventy pounds of lawful money of *England*, for money by him the said *Tobias* to the use of him the said *Joseph* before that time had and received; and being thereof so indebted, the said *Tobias* the same day and year at the parish aforesaid in the county aforesaid, in consideration thereof assumed upon himself, and to the said *Joseph* then and there faithfully promised that he the said *Tobias* would well and faithfully pay and satisfy the sum of money last mentioned, when he should be thereunto required. And also whereas the

the ſaid *Tobias* the day and year aforeſaid was indebted to the ſaid *Joſeph* in other ſeventy pounds, for money by him the ſaid *Joſeph* to the uſe and at the ſpecial inſtance and requeſt of him the ſaid *Tobias* before that time paid, expended, diſburſed and laid out; and being thereof ſo indebted the ſaid *Tobias* the ſaid day and year at the pariſh aforeſaid in the county aforeſaid, in conſideration thereof aſſumed upon himſelf, and to the ſaid *Joſeph* then and there faithfully promiſed that he the ſaid *Tobias* would well and faithfully pay and ſatisfy the ſaid ſum of ſeventy pounds laſt mentioned to the ſaid *Joſeph* when he ſhould be thereunto requeſted. And alſo whereas the ſaid *Tobias*, the ſame day and year was indebted to the ſaid *Joſeph* in other ſeventy pounds of lawful money of *England*, for the like ſum of money which for and on the behalf of the ſaid *Tobias*, and at his inſtance and requeſt the ſaid *Joſeph* before that time had paid to the ſaid late king, to whom the ſaid *Tobias* then did ſtand juſtly indebted, and ought to have paid it; and being thereof ſo indebted, the ſaid *Tobias* the day and year aboveſaid, at the pariſh aforeſaid in the county aforeſaid, in conſideration thereof aſſumed upon himſelf and to the ſame *Joſeph* then and there faithfully promiſed, that he the ſaid *Tobias* would well and faithfully pay and ſatisfy the ſaid ſeventy pounds laſt mentioned to the ſaid *Joſeph*, when he ſhould be thereunto required: nevertheleſs the ſaid *Tobias* not at all regarding his ſaid ſeveral promiſes and undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud him the ſaid *Joſeph* in this behalf, the ſaid ſeveral ſums of money, or any part thereof, (although often required) to the ſaid *Joſeph* hath not paid, or in any manner ſatisfied, but to pay the ſame to him hath hitherto wholly refuſed, and yet doth refuſe, to the damage of him the ſaid *Joſeph* of one hundred pounds; and thereupon he brings ſuit, &c.

Plea, that defendant was a Gentleman, and not an Eſquire, in abatement.

And the ſaid *Tobias Purcell*, againſt whom the ſaid bill is exhibited by the name of *Tobias Purcell*, Eſquire by *Henry Wright* his attorney, comes and defends the force and injury; and ſaith, that he ought not to be compelled to anſwer to the ſaid bill, becauſe he ſaith, that he at the time of exhibiting the ſaid bill was a Gentleman, and not an Eſquire, as by the ſaid bill is above ſuppoſed, to wit, at the pariſh aforeſaid in the county aforeſaid; and this he is ready to verify: wherefore as he is named Eſquire in the ſaid bill, he prays judgment of the ſaid bill, and that the bill may be quaſhed, &c.

Replication, proteſting that the matter in the plea is in-

And the ſaid *Joſeph Bennet* ſaith, that by any thing by the ſaid *Tobias* above in pleading alledged, the ſaid bill of him the ſaid *Joſeph* ought not to be quiſhed, becauſe proteſting

testing that the plea aforesaid above pleaded in abatement of the said bill of him the said *Joseph*, and the matter in the same contained in manner and form aforesaid pleaded, are not sufficient in law for this cause, (among others) that is to say, for that the action or cause of him the said *Joseph* is an action or cause prosecuted by a bill, and without the original writ of our lady the now queen, in which no outlawry lieth or can lie upon such bill; neither is it provided by the statute of additions lately set forth, that any additions shall be in such actions so prosecuted; and so it is immaterial in this action whether the said *Tobias* be a Gentleman or an Esquire: nevertheless for plea the said *Joseph* saith and asserts, that long before, and at the time of exhibiting of his bill aforesaid, the said *Tobias* was esteemed and reputed as well an Esquire as a Gentleman, but more especially an Esquire, by reason and in respect not only of his parentage, but also of his most worthy employment: and this he prays that it may be inquired of by the country.

sufficient, and that in an action by bill, an addition is immaterial.

Yet for replication says defendant is an Esquire, and goes to the country.

And the said *Tobias* saith, that the said plea by the said *Joseph* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are not sufficient in law to compel him the said *Tobias* to answer to the said bill of him the said *Joseph*, to which the said *Tobias* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient replication in this behalf, the said *Tobias*, as before, prays judgment of the bill aforesaid, and that the bill may be quashed, &c.

Demurrer.

And the said *Joseph Bennet* saith, that the said plea by him the said *Joseph* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are good and sufficient in law to compel him the said *Tobias* to answer to the said bill of him the said *Joseph*; which said plea, and the matter in the same contained, the said *Joseph* is ready to verify and prove, as the court, &c. And because the said *Tobias* doth not answer to that plea, nor in any manner denies it, he the said *Joseph* prays judgment, and that the said *Tobias* may answer over to the said bill of the said *Joseph*: but because the court of our said lady the now queen here are not yet advised of their judgment to be given of and concerning the premisses, day thereupon is given to the parties aforesaid, before our lady the queen at *Westminster*, until *Saturday* next after the octave of St. *Martin*, to hear their judgment of and concerning the premisses, for that the court of our said lady the queen now here is not yet, &c.

Joinder in demurrer.

Judgment that the defendant answer over.

Pleas before the Lord the King at Westminster, *of the Term of Saint* Hilary, *in the twelfth Year of the Reign of the Lord* William *the Third, by the Grace of God, now King of* England, &c.

Amongst the Pleas of the Crown. Roll 38.

The King *against* Watson. *Reported in* 2 Ld. Raym. 856.

Indictment for not repairing a house adjoining to a bridge in *Lynn*, which defendant was obliged to repair by reason of his tenure thereof.

The borough of *King's Lynn* in the county of *Norfolk*, (to wit) BE it remembered, that heretofore, that is to say, on *Thursday* the 11th day of *January* in the 11th year of the reign of our sovereign lord *William* the third, by the grace of God, of *England*, *Scotland*, *France* and *Ireland*, king, defender of the faith, &c. at the general sessions of the peace and gaol-delivery of the lord the king, held for the borough aforesaid, and the liberty of the same borough, at the *Guildhall* of the said borough, before *Robert Awborne*, esq; mayor, *Daniel Bedingfield*, esq; recorder, *Benjamin Keene*, *Robert Sparrow*, and others their fellows, justices of the said lord the king, assigned to keep his peace within the borough aforesaid, and the liberty of the same borough, and to deliver the gaol within the said borough of the prisoners being in the same, and also to hear and determine divers felonies, trespasses and misdemeanors committed in the said borough, and the liberty of the same borough, by the oath of twelve jurors, of honest and lawful men of the borough aforesaid, then and there impanelled and sworn to inquire for the said lord the king and the body of the borough aforesaid, it was presented at large, that *James Watson*, late of *King's Lynn* in the county of *Norfolk*, victualler, on the first day of *January* in the 11th year of the reign of our sovereign lord *William* the third, now king of *England*, &c. and continually from that time until the day of the taking of the said inquisition hath been possessed, and yet is possessed of a certain messuage or dwelling-house, with the appurtenances, situate and being in *King's Lynn* aforesaid, within the borough aforesaid and liberty thereof, and within the jurisdiction of this court, adjoining to a certain bridge called *Stonebridge*, and upon a certain common fleet or sewer called *Purfleetdrains*, formerly built, (the same

 bridge

bridge being the king's common highway there); and that by reason of his tenure thereof, he the said *James* hath been obliged, and ought well and sufficiently to repair and maintain the foundation of the said messuage or dwelling-house upon the fleet or sewer aforesaid: nevertheless the said *James* for all the time aforesaid hath suffered, and yet suffers the foundation of the said messuage or dwelling-house to lie and continue in great decay and ruin for want of due reparation thereof, by which the said messuage or dwelling house hath been and yet is very like to fall down into the said common fleet and sewer, and in and upon the said bridge, to the great danger of killing the liege men and subjects of the said lord the king passing, residing and working on, by, over and under the said bridge, and to the no small fear and grievance of them the said liege men and subjects of the said lord the king, to the evil example of others in such case delinquent, and against the peace of the said lord the now king, his crown and dignity, which said indictment the lord the now king afterwards for certain causes caused to come to be determined before himself, &c. Wherefore the sheriff was commanded, that he should not omit, &c. but that he should cause the said *James Watson* to come to answer, &c. And now, to wit, on *Thursday* next after the octave of St. *Hilary* in this same term before the lord the king at *Westminster* cometh the said *James Watson* by *Richard Foulkes* his attorney, and having heard the indictment aforesaid, saith, that he is not guilty thereof, and of this he puts himself upon the country, and *Samuel Astry*, knight, coroner and attorney of the lord the king, in the court of the said lord the king before the king himself, who prosecutes for the said lord the king in this behalf likewise, &c. Therefore let a jury thereupon come before the said lord the king from *Easter* day in fifteen days, wheresoever, &c. by whom, &c. and who, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said fifteen days of *Easter*, before the said lord the king at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. and the sheriff hath not sent the writ thereof therefore, as before, let a jury come thereupon before the said lord the king on the morrow of the Holy Trinity, wheresoever, &c. by whom, &c. and who, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. On which said morrow of the Holy

The indictment removed to *B. R*

Plea Not guilty

Venire awarded.

The sheriff *non misit breve*

Trinity before the said lord the king at *Westminster* come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid: and the sheriff hath returned the names of twelve jurors, of whom none, &c. Therefore the sheriff of the county aforesaid is commanded, that he do not omit, &c. but that he distrain them by all their lands, &c. And that of the issues, &c. so that he may have their bodies before the said lord the king from the day of Saint *Michael* in three weeks, wheresoever, &c. or before the justices of the said lord the king, assigned to take the assizes in the county of *Norfolk* aforesaid, if they shall before come on *Thursday* the 14th day of *August*, at the castle of *Norwich* in the county aforesaid by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said three weeks of St. *Michael*, before the said lord the king at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. And the justices aforesaid, before whom, &c. have sent here their record before them had in these words: Afterwards on the day and at the place within contained, before *Thomas Trevor*, knight, chief justice of the lord the king of the bench, and *Robert Tracy*, esq; one of the barons of the exchequer of the said lord the king, justices of him the said lord the king assigned to take the assizes in the county of *Norfolk*, by form of the statute, &c. came as well the within named *Samuel Astry*, knight, coroner and attorney of the said lord the king in the court of him the said lord the king before the king himself, who prosecutes, &c. in his proper person, as the within written *James Watson* by his attorney within contained, and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Thomas Woodrowe*, *Samuel Jellians*, *Henry Utting*, *John Kingwood*, *Thomas Ward*, *Thomas Backe*, *John Butler*, *Thomas Pycroft*, *John Haylett*, *Thomas Norris* and *Francis Fisher* came, and are sworn upon the jury aforesaid; and because the rest of the jurors of the same jury did not appear, therefore another of the bye-standers, being chosen for this purpose by the sheriff of the county aforesaid, at the request of *Edward Northey*, esq; attorney general of the said lord the king, and by the command of the said justices newly appointed, whose name is affiled in the panel within written, according to the form of the statute in such case lately made and provided; which said juror so newly appointed, to wit, *William Sheene* being called

Return of the Venire.

Distringas awarded.

Nisi prius at Norwich.

Postea

Tales

called likewise came: and hereupon publick proclamation was made here in court for the said lord the king, (as the custom is) that if there was any one who would inform the justices aforesaid, the said lord the king's serjeant at law, the said king's attorney general, or the jury within written, of the premisses within contained, he might come forth and be heard: and *Charles Whitaker*, esq; one of the serjeants at law of the said lord the king, offered himself to do this; whereupon it was proceeded to take the jury aforesaid, by the said jurors now appearing thereupon, who were chosen, tried and sworn to speak the truth concerning the matter within contained. And afterwards one of the jurors aforesaid, to wit, *Francis Fisher* of *Blo Norton*, with the consent as well of the said *Samuel Astry*, knight, who prosecutes, *&c.* as of the said *James Watson*, was absolutely withdrawn by the court from the panel within written, and the rest of the jurors, with the consent as well of the said *Samuel Astry*, knight, who prosecutes, *&c.* as of the said *James Watson*, are discharged by the justices aforesaid from saying any thing now of their verdict of and upon the premisses: therefore the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, *&c.* but that he distrain the jurors before impanelled by all their lands, *&c.* and that of the issues, *&c.* so that he may have their bodies before the said lord the king on the octave of Saint *Hilary*, wheresoever, *&c.* to recognize in form aforesaid. The sheriff of the county aforesaid is also commanded, that he do not omit, *&c.* but that he put ten such, *&c.* and who, *&c.* and that he have them before the said lord the king at the aforesaid term, to recognize, *&c.* in form aforesaid, so that, *&c.* The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, *&c.* as to the said *James Watson*, *&c.* At which said octave of Saint *Hilary* before the said lord the king at *Westminster* came as well the said *Samuel Astry*, knight, who prosecutes, *&c.* as the said *James Watson* by his attorney aforesaid; and the sheriff hath not thereupon sent the writ: therefore, as before, the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, *&c.* but that he distrain the jurors before impanelled by all their lands, *&c.* and that of the issues, *&c.* so that he may have their bodies before the said lord the king from *Easter* day in fifteen days, wheresoever, *&c.* or before the justices of the said lord the king, assigned to take the assises in the county of *Norfolk* aforesaid, if they shall before come on *Thursday* the 19th day of *March* at *Thetford* in the county aforesaid, by form of the statute, *&c.* for

The trial put off by a juror being withdrawn.

Decem tales awarded.

The sheriff *non misit breve.*

Nisi prius at *Thetford.*

for want of jurors: therefore let the sheriff have the bodies, &c. to recognize in form aforesaid: the sheriff of the county aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. by whom, &c. and who, &c. And that he have them before the said lord the king at the said fifteen days of *Easter*, wheresoever, &c. or before the said justices of the said lord the king, assigned to take the assises in the county aforesaid, if they shall before come, on the said *Thursday* the 19th day of *March* at *Thetford* aforesaid in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid, &c. so that &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said fifteen days of *Easter*, before which date our late sovereign lord *William* the third, king of *England*, &c. died, and the rule and government of this realm of *England* descended to the most serene lady *Anne*, now queen of *England*, &c. which said lady *Anne* hath taken upon herself the rule and government thereof: and at the same fifteen days of *Easter* the process aforesaid was adjourned by the writ of the said lady *Anne*, now queen of *England*, &c. of common adjournment, before the said lady the queen, until from *Easter* day in three weeks, wheresoever, &c. At which said three weeks of *Easter*, before the said lady the queen at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. And the sheriff of the county of *Norfolk* aforesaid hath not thereupon sent the writ, nor the justices the record, therefore, as before, the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, &c. but that he distrain the jury before impanelled by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lady the now queen on the morrow of the Holy Trinity, wheresoever, &c. to recognize in form aforesaid. The sheriff of the county aforesaid is also commanded, that he do not omit, &c. but that he put ten such, &c. and who, &c. and that he have them before the said lady the queen at the said term to recognize in form aforesaid, so that, &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said morrow of the Holy Trinity, before the said lady the now queen at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid; and the sheriff hath not thereupon sent the writ, nor

A second *decem tales.*

The death of [illegible]

A third *decem tales.*

nor the justices the record, therefore, as before, the sheriff of the county aforesaid is commanded, that (the said *Francis Fisher* being removed) he do not omit, &c. but that he distrain the jury before impanelled by all their lands, &c. and that of the issues, &c. so that he may have their bodies before the said lady the queen from the day of St. *Michael* in three weeks, wheresoever, &c. or before the justices of the said lady the now queen, assigned to take the assises in the county of *Norfolk* aforesaid, if they shall before come, on *Tuesday* the fourth day of *August*, at the castle of *Norwich* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have the bodies, &c. to recognize in form aforesaid. The sheriff of the said county is also commanded, that he do not omit, &c. but that he put ten such, &c. by whom, &c. and who, &c. And that he have them before the said lady the queen at the said three weeks of St. *Michael*, wheresoever, &c. or before the said justices of the said lady the now queen, assigned to take the assises in the county aforesaid, if they shall before come, on the said *Tuesday* the fourth day of *August*, at the said castle of *Norwich* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. Therefore let the sheriff have their bodies, &c. to recognize in form aforesaid, so that, &c. The same day is given as well to the said *Samuel Astry*, knight, who prosecutes, &c. as to the said *James Watson*, &c. At which said three weeks of St. *Michael*, before the said lady the queen at *Westminster*, come as well the said *Samuel Astry*, knight, who prosecutes, &c. as the said *James Watson* by his attorney aforesaid. And the said justices, before whom, &c. have sent here their record before them had in these words: Afterwards on the day and at the place within contained, before *Edward Nevill*, knight, one of the said lady the queen her justices of the bench, and *Robert Price*, esq; one of the barons of the exchequer of the said lady the queen, justices of the said lady the queen, assigned to take the assises in the county of *Norfolk*, by form of the statute, &c. came as well the within named *Samuel Astry*, knight, coroner and attorney of the said lady the queen in the court of the said lady the queen before the queen herself, who prosecutes, &c. in his proper person, as the within written *James Watson* by his attorney within contained: and hereupon public proclamation was made here in court for the said lady the queen, as the custom is, that if there was any one who would inform the justices aforesaid, the said queen's serjeant at law, the said queen's attorney general, or the jury within written, concerning the premisses, he

Nisi prius at *Norwich*.

Fourth *decem tales*.

Postea.

he might come forth and be heard; and *Charles Whitaker*, esq; serjeant at law, offered himself to do this; whereupon it was proceeded to take the jury aforesaid; and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *John Elgar*, *Samuel Scarfe*, *Thomas Woodrowe*, *Samuel Jelliens*, *John Lingwood*, *John Butler*, *John Haylett*, *Thomas Morris*, *John Gamble* and *Charles Butlock* came, and are sworn upon that jury: and because the rest of the jurors of the said jury did not appear, therefore others of the by-standers, by the sheriff of the county aforesaid to this being chosen, at the request of the said *Samuel Astry*, and by the command of the justices aforesaid are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided; which said jurors so newly appointed, to wit, *William Shean* and *Edward Roberts* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn say upon their oath, that the within named *James Watson*, at the time of the indictment within specified against him for the matters within contained, and for ten years before, was possessed of the messuage or dwelling-house within specified; and that one *Sarah Davy*, widow, who at the same time dwelt at *Exeter* out of the jurisdiction of the court of the borough of *King's Lynn* within written at the time of the indictment aforesaid, and also for the whole time aforesaid, was seised of and in the messuage or dwelling-house aforesaid; and being so seised thereof, demised the said messuage or dwelling-house, with the appurtenances, to the said *James*, to hold to the said *James* at the will only of them the said *Sarah* and *James*; but whether the said *James* be chargeable to repair the messuage or dwelling-house aforesaid, and the foundation thereof, by reason of his tenure, the jurors aforesaid are wholly ignorant, and pray the advisement of the court in the premisses: and if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the court here, that the said *James*, by reason of his tenure, be chargeable to repair the said messuage or dwelling-house, and the foundation thereof, then they the said jurors say upon their oath aforesaid, that the said *James Watson* is guilty of the premisses in the indictment within written within specified, in manner and form as by that indictment for the said lady the queen is within alledged: but if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the court here that the said

Tales.

Writ of adjournment Special verdict.

said *James*, by reason of his tenure, is not chargeable to repair the messuage or dwelling-house aforesaid, nor the foundation thereof, then the same jurors say upon their oath aforesaid, that the said *James Watson* is not guilty of the premisses in the same indictment within specified, in manner and form as the same *James* within in pleading for himself hath alledged, &c.

Judgment against the defendant.

The Queen *against* Burneby. 2 Ld. Raym. 900.

A Conviction by Justices of the Peace for cutting down Trees, grounded on the Statute of the 43d Year of Eliz. cap. 7.

County of *Huntingdon*, ss. WHEREAS complaint hath been made unto us, whose names are hereunto subscribed, justices of the peace for the said county of *Huntingdon*, on the day of the date hereof, by Sir *Robert Bernard*, bart. against *Robert Burneby* of *Brampton* in the said county of *Huntingdon*, gentleman, and *John Sandy* of the same town, labourer, for the unlawful cutting down and spoiling of divers lime-trees of the said Sir *Robert Bernard*, in the night-time of the 23d day of *August* last past, (the said lime-trees being then growing on the ground of the said Sir *Robert Bernard* in *Brampton* aforesaid): and whereas it appears unto us the said justices of the peace, by the testimony of *Mary Prior* of *Brampton* aforesaid, widow, being duly sworn and examined by us, according to the statute made in the three and fortieth year of the reign of the late queen *Elizabeth*, intitled, an Act to avoid and prevent divers misdemeanors in lewd and idle persons, That the said *Robert Burneby* and *John Sandy* did cut down and spoil the said lime-trees in the night-time of the day aforesaid; and having heard the said *Robert Burneby* and *John Sandy* (being this day brought before us to answer the said offence) and also having heard and examined divers witnesses upon oath, produced by the said *Robert Burneby* and *John Sandy* in their defence, we the said justices of the peace, upon hearing what could be alledged and proved on either side, have adjudged and convicted, and do hereby adjudge and convict the said *Robert Burneby* and *John Sandy* to be guilty of the offence aforesaid, for cutting down and spoiling the said lime-trees, and according to the power and authority given by

by the ſaid act, we the ſaid juſtices have ordered and appointed, and do hereby order and appoint that the ſaid *Robert Burneby* and *John Sandy* do on or upon the 22d day of this inſtant month of *October* give and pay unto the ſaid Sir *Robert Bernard* 20 *l.* of lawful *Engliſh* money, for recompence and full ſatisfaction for his damages by him ſuſtained by reaſon of the cutting down and ſpoiling of the ſaid lime-trees; and in default of payment thereof, to be further proceeded againſt according to the direction of the ſaid ſtatute. Given under our hands and ſeals the 7th day of *October* in the 13th year of the reign of our ſovereign lord *William* the third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, king, defender of the faith, *&c. annoq; Domini* 1701.

Signed and ſealed by *John Pocklington*, eſq; *John Bagg*, eſq; *William Naylor*, eſq; *John Knighton*, doctor in divinity, *Robert Blemell*, clerk, and *James Torkington*, eſq; ſix of his majeſty's juſtices of the peace for the county of *Huntington*.

The King *againſt* Naſh. 2 Ld. Raym. 989.

The Record of a Conviction for aiding and aſſiſting in Deer-ſtealing.

Suſſex, (to wit) BE it remembered, that on the 20th day of *Auguſt* in the 13th year of the reign of our ſovereign lord *William* the third, now king of *England*, *&c.* at the pariſh of *Boxgrove* in the county of *Suſſex* aforeſaid, *William Mant* of the ſaid pariſh of *Boxgrove*, huſbandman, in his proper perſon came before us *John Miller*, eſq; and *William Weſtbrook*, eſq; juſtices of the ſaid lord the now king, aſſigned to keep the peace in the county of *Suſſex* aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſame county, and gave information to us the aforeſaid juſtices, that *Edward Rolfe* of *South Barſtead* in the county aforeſaid, huſbandman, and another perſon to the ſaid *William Mant* unknown, in the month of *April*, to wit, on the 11th day of the ſaid month in the abovefaid 13th year of the reign of the ſaid lord the now king, in the night of the ſame day and within the ſpace of twelve months next before the ſaid information made before us, five fallow deer in the park of the then *William Morley*, knight of the bath, now deceaſed, called *Halnaker Park*, (the ſame park lying and being in the ſaid pariſh of *Boxgrove*, and being a park and ſoil where fallow deer

deer now are, and on the ſaid 11th day of *April* in the 13th year aboveſaid, and for the ſpace of forty years and more have been uſually kept) with force and arms, &c. with certain dogs unlawfully and unjuſtly chaſed; and killed five fallow deer of the ſaid *William Morley* in the ſaid park then being, and one of thoſe deer ſo killed, carried away, without the conſent of the ſaid *William Morley*, (then being the proprietor of the ſaid park, and of the ſaid ſeveral deer here mentioned to be killed,) or of any other perſon ſpecially intruſted with the keeping of the ſaid park, and the deer in the ſame park, or of any of them, at the time of the killing of thoſe deer, or at any other time hitherto, to wit, at the pariſh of *Boxgrove* aforeſaid in the county aforeſaid, and that *Thomas Naſh* of the pariſh of *Walberton* in the county aforeſaid, gentleman, in the ſaid month of *April* in the aboveſaid 11th year of the reign of the ſaid lord the now king, to wit, on the 11th day of the ſame month at the pariſh of *Boxgrove* aforeſaid, with force and arms, &c. was unlawfully and unjuſtly aiding and aſſiſting the ſaid *Edward Rolfe*, and the ſaid other perſon, to the ſaid *William Mant* unknown, in the unlawful and unjuſt chaſing and killing of the ſaid five fallow deer, that is to ſay, in perſuading and inticing the ſaid *Edward Rolfe*, and the other perſon unknown, to chaſe and kill the ſame deer in the ſaid park at the ſaid pariſh of *Boxgrove*, and by then and there lending certain dogs of him the ſaid *Thomas Naſh* to the ſaid *Edward Rolfe* and the other perſon, for the chaſing and killing of thoſe deer, being the ſame dogs which killed thoſe deer, and in then and there lending the horſe of him the ſaid *Thomas Naſh* to the ſaid *Edward Rolfe* and the other perſon to carry away the deer which they then and there killed with thoſe dogs, contrary to the form of the ſtatute in ſuch caſe lately made and provided. And afterwards, to wit, on the 28th day of the ſaid month of *Auguſt* in the aboveſaid 13th year of the reign of the ſaid lord the now king at *Arundell* in the county of *Suſſex* aforeſaid, one *Robert Haynes* of *Walberton* in the county of *Suſſex* aforeſaid, huſbandman, being a credible witneſs, in his proper perſon comes before us the ſaid juſtices, and now makes his corporal oath upon the Holy Evangeliſts of God to ſpeak the truth of and concerning the premiſſes in the information aforeſaid ſpecified, before us the ſaid juſtices, (having ſufficient power and authority to adminiſter the ſaid oath to the ſaid *Robert Haynes* in this behalf); and the ſaid *Robert Haynes* being ſworn as aforeſaid upon his oath aforeſaid now ſaith, depoſeth and ſweareth, that *Edward Rolfe* of *Southerſtead* in the county aforeſaid, huſbandman, in the information aforeſaid named, and he the ſaid *Robert Haynes* in the

the month of *April*, to wit, on the 11th day of the ſame month in the aboveſaid 13th year of the reign of the ſaid lord the now king, with force and arms, *&c.* with certain dogs entered into the park of the then *William Morley*, knight of the bath, in the information aforeſaid mentioned called *Halnaker Park*, ſituate, lying and being in the pariſh of *Boxgrove* in the county of *Suſſex* aforeſaid, (being a park and ſoil where fallow deer then, and for the ſpace of forty years then next before paſt, were uſually kept) and five fallow deer of the ſaid *William Morley* in the ſame park then being, then and there with thoſe dogs chaſed and killed, and carried away one deer of the ſaid five deer ſo killed as aforeſaid: and the ſame *Robert Haynes* upon his ſaid oath further ſaith, depoſeth and ſweareth, that *Thomas Naſh* of the pariſh of *Walberton* in the county of *Suſſex* aforeſaid, gentleman, in the information aforeſaid named, in the ſaid month of *April*, to wit, on the 11th day of the ſame month in the aboveſaid 13th year of the reign of the ſaid lord the now king, incited them the ſaid *Edward Rolfe*, and *Robert Haynes* to chaſe and kill the ſaid five fallow deer in the park aforeſaid, at the pariſh of *Boxgrove* aforeſaid, and then and there did lend three greyhounds of him the ſaid *Thomas Naſh* to them the ſaid *Edward Rolfe* and *Robert Haynes*, for the chaſing and killing of the ſaid fallow deer of the ſaid *William Morley*, in his ſaid park, at the ſaid pariſh of *Boxgrove* in the county aforeſaid, and afterwards received from them the ſaid *Edward Rolfe* and *Robert Haynes*, and diſpoſed of to his own uſe, one deer of the ſaid five deer ſo killed with the dogs of him the ſaid *Thomas Naſh*, as aforeſaid, in the ſaid park of the ſaid then *William Morley*, in the information aforeſaid ſpecified: whereupon the ſaid *Thomas Naſh*, after a ſummons to him thereupon firſt in that behalf now duly made, on the ſame 28th day of *Auguſt* in the aboveſaid 13th year of the reign of the ſaid lord the now king, at *Arundell* aforeſaid in the county aforeſaid, by reaſon of the information aforeſaid appeared in his proper perſon before us the ſaid *John Miller* and *William Weſtbrook*, then juſtices of the ſaid lord the king, aſſigned to keep the peace in the county of *Suſſex* aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſame county. And the ſaid information and the evidence thereupon being heard and fully underſtood by him the ſaid *Thomas Naſh*, he the ſaid *Thomas Naſh* is aſked by us the ſaid juſtices, if he hath or knoweth any thing to ſay for himſelf, why he the ſaid *Thomas Naſh* ſhould not be convicted of the premiſſes aforeſaid above laid to his charge in form aforeſaid; and becauſe (we having heard and fully underſtood

understood all and every thing alledged by him the said *Thomas Nash* in his defence of and concerning the premisses) it manifestly appears to us the said justices that the said *Thomas Nash* is guilty of the premisses aforesaid, in the said information laid to his charge, in manner and form as in the said information above in that behalf is alledged: therefore it is considered by us the said justices, that the said *Thomas Nash*, by testimony of the said *Robert Haynes*, a credible witness, upon his said oath before us the said justices made as aforesaid, is convicted of the premisses above laid to his charge, as set forth by the said information, according to the form of the statute in such case made and provided. In witness whereof we the said *John Miller* and *William Westbrook*, the justices aforesaid, have set our hands and seals to this record, at *Arundell* aforesaid, the said 28th day of *August* in the abovesaid 13th year of the reign of the lord the king that now is.

John Miller.
William Westbrooke.

Pleas before our Sovereign Lady the Queen at Westminster *of* [illegible] *Term of St.* Michael *in the second Year of the Reign of Lady* Ann, *Queen of* England, &c. Roll 364.

Nutt *against* Mills. 2 Ld. Raym. 1014.

London, (to wit) BE it remembered, that on *Saturday* next after three weeks of Saint *Michael* in this same term, before our lady the queen at *Westminster* came *John Nutt* by *George Allgood* his attorney, and brought here into the court of the said lady the queen then there his certain bill against *Henry Mills*, one of the clerks of *Rowland Holt* esq; and *Robert Coleman* gentleman, chief clerks of the lady the queen, assigned to inroll pleas in the court of her the said lady the queen before the queen herself, present here in court in his proper person, otherwise called *Henry Mills* of the *Inner Temple London* gentleman, of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, (to wit) *John Nutt* complains of *Henry Mills*, one of the clerks of *Rowland Holt*, esq; and *Robert Coleman*, gentleman, chief clerks of the lady the queen, assigned to inroll pleas in the court of her the said lady the queen before the queen herself,

Bill against clerk of the king's bench.

In debt on a bond.

self, present here in court in his proper person, otherwise called *Henry Mills* of the *Inner Temple*, *London*, gentleman, of a plea that he render to him sixty pounds of lawful money of *England*, which he owes to him, and unjustly detains, for that, to wit, That whereas the aforesaid *Henry* on the 28th day of *June* in the second year of the reign of our lady *Ann*, now queen of *England*, &c. at *London* aforesaid, to wit, in the parish of Saint *Mary Le Bow* in the ward of *Cheape*, by his certain writing obligatory, sealed with the seal of him the said *Henry*, and now here shewn to the court of the said lady the now queen, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the said *John* in the said 60 *l.* to be paid to the said *John*, when he should be thereunto afterwards requested: nevertheless the said *Henry*, although often requested, &c. the said 60 *l.* to the said *John* hath not yet paid, but to pay the same to him, hath hitherto absolutely denied, and yet doth deny, to the damage of the said *John* of ten pounds: and thereupon he brings suit, &c.

Oyer of the bond.

And the said *Henry Mills*, present here in court in his proper person, defends the force and injury, &c. and prays *oyer* of the said writing obligatory, and it is read to him, &c. he also prays *oyer* of the condition of the same writing, and it is read to him in these words, that is to say, The condition of this obligation is such, that if the above-bounden *Henry Mills*, his heirs, executors or administrators, do well and truly pay or cause to be paid unto the above-named *John Nutt*, his executors, administrators or assigns, the full sum of 30 *l.* of good and lawful money of *England*, together with the interest thereof after the rate of 6 *l. per centum per annum*, at or upon the twelfth day of *July* next ensuing the date hereof, then this obligation to be void, or else to remain in full force and virtue; which being read and heard, he the said *Henry* prays judgment of the bill aforesaid, because he saith, that the said *John*, to wit, on *Friday* the 22d day of *October* in the abovesaid second year of the reign of the said lady the now queen, of *England*, &c. took upon himself the order of knighthood, and now is a knight; and this he is ready to verify: wherefore he prays judgment of the bill aforesaid, and that the said bill may be quashed, &c.

Plea, that the plaintiff is a knight, in abatement.

Demurrer.

And the said *John* saith, that by any thing by the said *Henry* above in pleading alledged, the bill of him the said *John* ought not to be, quashed, because he saith, that the plea aforesaid by the said *Henry* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to quash the said bill of him the said

John

John against the said *Henry*; to which said bill the said *John* hath no necessity, neither is he bound by the law of the land in any manner to answer; and that he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *John* prays judgment, and that the bill of him the said *John* may be adjudged good, and that the said *Henry* may answer to the said bill, &c.

Joinder in demurrer.

And the said *Henry* saith, that the plea aforesaid by him the said *Henry* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to quash the bill of him the said *John* against the said *Henry*; which said plea, and the matter therein contained, he the said *Henry* is ready to verify and prove, as the court, &c. And because the said *John* hath not answered to that plea, nor hath hitherto in any manner denied it, he the said *Henry* as before prays judgment, and that the said bill may be quashed, &c. But because the court of the said lady the queen now here is not yet advised to give their judgment of and concerning the premisses, day is thereupon given to the parties aforesaid before the lady the queen at *Westminster* until next after to hear their judgment of and concerning the premisses, for that the court of the said lady the queen now here is not yet, &c.

Respondeat Ouster.

Pleas before our Sovereign Lady the Queen at Westminster *of the Term of Saint* Hilary *in the first Year of the Reign of the Lady* Ann, *now Queen of* England, &c. Roll 560.

Lysney *against* Selby. 2 Ld. Raym. 1118.

Action on the case for a deceit.

Middlesex, (to wit) BE it remembered, that heretofore, that is to say, in the term of Saint *Michael* last past before the lady the queen at *Westminster* came *Mary Lisney*, widow, by *John Compton* her attorney, and brought here into the court of the said lady the queen then there her certain bill against *Gerrard Selby* in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *Middlesex*, to wit, *Mary Lysney*, widow, complains of *Gerrard Selby*, in custody of the marshal of the *Marshalsea* of the lady the queen, being before the queen herself, for that, to wit, that whereas on the

the 2d day of *March* in the 14th year of the reign of the lord *William* the third, late king of *England*, &c. at the parish of Saint *John Wapping*, in the county aforesaid, a certain conversation was had and moved between the said *Gerrard* and her the said *Mary* of and concerning the purchasing of fourteen messuages, with the appurtenances, of him the said *Gerrard*, situate and lying in the parish of Saint *John Wapping* in the county aforesaid, by her the said *Mary* of the said *Gerrard*, to which or to the equity of redemption thereof he the said *Gerrard* then and there had a title, and of the remainder of a certain term of sixty-one years, commencing on the morrow of the feast of the annunciation of the blessed virgin *Mary*, which was in the year of our Lord 1683, then to come and unexpired: and upon the conversation aforesaid the said *Gerrard* then and there falsely, fraudulently and deceitfully asserted and affirmed to the said *Mary*, that the said 14 messuages, with the appurtenances, were then letten for the yearly rent of 68 *l.* which said assertion and affirmation of the said *Gerrard* by him then and there so made, she the said *Mary* believing to be true, she the said *Mary* afterwards, to wit, the same day and year first aforesaid, at the parish aforesaid in the county aforesaid, bought of the said *Gerrard* the said 14 messuages, with the appurtenances, for a great sum of money, to wit, for five shillings to the said *Gerrard* by her the said *Mary* then and there in hand paid, and for 200 *l.* from him the said *Gerrard* to her the said *Mary* then before owing, for money by her the said *Mary* to the said *Gerrard* then before lent; and thereupon the said *Gerrard*, by a certain indenture of assignment then and there made between the said *Gerrard* of the one part, and the said *Mary* of the other part, bargained, sold and assigned to the said *Mary* the said 14 messuages with the appurtenances, and the equity of redemption thereof, to hold to the said *Mary* and her assigns, for the residue and remainder of the said term of 61 years then to come and unexpired, when in truth and in fact the said 14 messuages with the appurtenances, at the said time of the said assertion and affirmation of the said *Gerrard* as aforesaid made, and at the time of the buying and assignment thereof were letten for 52 *l.* 10 *s.* only, and no more, to wit, at the parish aforesaid in the county aforesaid: and so the said *Mary* saith, that the said *Gerrard* her the said *Mary* then and there falsely and fraudulently deceived and defrauded; whereupon she the said *Mary* saith, that she is injured, and hath damage to the value of 200 *l.* and thereupon she brings suit, &c.

Defendant pleads, Not guilty.

Verdict for the Plaintiff. Damages 20 *l.*

By

By Indictment, of Easter Term in the fourth Year of Queen Ann.

The Queen *against* Smith. 2 Ld. Raym. 1144.

Error upon an indictment for usury before the justices of *Middlesex*.

Middlesex. HEretofore, that is to say, on the 8th day of *March* in the 4th year of the reign of our sovereign lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before the said lady the queen at *Westminster*, the said lady the queen sent to the keepers of her peace, and to the justices assigned to keep the peace within the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, her writ close in these words, to wit, *Ann* by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. to the keepers of our peace, and to our justices assigned to keep the peace within the county of *Middlesex*, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, greeting: because in the record and process, and also in the giving of judgment upon a certain indictment against *Dorothy Smith*, late of the parish of Saint *Clement Danes* in the county of *Middlesex*, widow, for certain trespasses and contempts against the form of the statute set forth against unlawful usury, whereof before you she hath been indicted, and is thereupon convicted by a certain jury of the county taken between us and the said *Dorothy*, as it is said, manifest error hath intervened, to the great damage of her the said *Dorothy*, as from her complaint we have received information: we willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to her the said *Dorothy*, command you, that if judgment thereupon be given, then that you do send the record and process aforesaid, with all things touching the same to us, under your seals, or the seal of one of you, distinctly and openly, and this writ; so that we may have them in fifteen days from *Easter* day, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may further do thereupon for correcting the error, *that* which of right and according to the law and custom of our realm of *England* shall be to be done. Witness ourself at *Westminster* the 8th day of *March* in the 4th year of our Reign.

Barnes.

By virtue of this writ to me and others directed, I send the record of conviction of the within named *Dorothy Smith*, whereof mention is made in this writ, with all things touching the same, annexed to this writ, before the lady the queen, as it is within commanded. The answer of *Wriothesley*, duke of *Bedford*, one of the justices within written.

Which said writ and record mentioned in the same were returned and certified as follows:

Middlesex, (to wit) BE it remembered, that at the general quarter-sessions of the peace of the lady the queen, holden for the county of *Middlesex* at *Hicks Hall* in Saint *John street* in the county aforesaid, on *Friday* in the week next after the feast of the *Epiphany*, to wit, the twelfth day of *January* in the third year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, *&c.* before *James Mundy*, serjeant at law, *Ralf Bucknall*, *Francis Tyssen*, *Thomas Owen*, *Edmund Prideaux*, *Joseph Offley*, *John Herbert*, *Nicholas Woolstenholme*, *John Perry*, *Martin Ryder*, *Richard Woodward* and others, their fellows justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanours committed in the same county, by the oath of *William Rathbone*, *George Bishop*, *Laurence Crosse*, *William Smith*, *Peter Sparks*, *Robert Bending*, *William Smart*, *Edward Hicks*, *Anthony Fryer*, *John Farren*, *John Sutton*, *Nicholas Meeter*, *Edward Davenport*, *Richard Hale*, *Jeremiah Mason*, *Thomas Derry*, *Thomas Ward*, *Peter Sharp*, *Moses Wilkinson*, *Robert Pitts*, *Nahum Crossley* and *Thomas Beanman*, honest and lawful men of the county aforesaid, then and there sworn and charged to inquire for the said lady the queen for the body of the county aforesaid, it is presented, that *Dorothy Smith*, late of the parish of Saint *Clement Danes* in the county of *Middlesex*, widow, on the 20th day of *August* in the third year of the reign of the lady *Ann*, by the grace of God, queen of *England*, *&c.* at the parish aforesaid in the county aforesaid, lent and advanced to one *Richard Jones* the sum of 5 *l.* of lawful money of *England*, to be paid to the said *Dorothy* upon the 8th day of *January* from thence next following in the year aforesaid. And the same *Dorothy Smith* afterwards, to wit, on the said 8th day of *January* in the year abovesaid, at the parish aforesaid in the county aforesaid, unjustly and corruptly received and had of the said *Richard Jones* for deferring and giving day of payment of the said sum of 5 *l.* for the time aforesaid, twelve

shillings

shillings and sixpence of lawful money of *England*; which said sum of 12*s.* 6*d.* by the said *Dorothy* so as aforesaid of the said *Richard* received and had for deferring and giving day of payment of the said sum of five pounds for the time aforesaid, exceedeth the sum of six pounds by the 100*l.* for one whole year, contrary to the form of the statute in such case made and provided, and against the peace of the said lady the now queen, her crown and dignity; wherefore the sheriff of the county of *Middlesex* is commanded, that he do not omit, *&c.* but that he cause the said *Dorothy Smith* to come to answer, *&c.* Upon which afterwards, to wit, at the same general quarter-sessions of the peace of the said lady the queen, held for the county aforesaid at *Hicks Hall* aforesaid in the county aforesaid, on the said *Friday* the 12th day of *January* in the third year of the reign of the said lady the queen abovesaid, before the said justices of the said lady the queen and others, their fellows aforesaid, cometh the said *Dorothy Smith* in her proper person, and having heard the indictment aforesaid, the same *Dorothy* saith, that she is not guilty thereof; and of this she puts herself upon the country: and *Simon Harcourt*, esq; clerk of the peace of the county aforesaid, who prosecutes for the said lady the queen in this behalf, likewise, *&c.* Therefore let a jury thereupon come before the justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors commited in the same county, and who, *&c.* to recognize, *&c.* because, *&c.* the same day is given as well to the said *Simon Harcourt*, who prosecutes, *&c.* as to the said *Dorothy Smith*, here, *&c.* whereupon at the next general sessions of the peace, to wit, at the general sessions of the peace of the said lady the queen, holden for the county aforesaid at *Hicks Hall* aforesaid in Saint *John street* aforesaid in the county aforesaid, to wit, on the 26th day of *February* in the 3d year of the reign of the said lady the queen abovesaid, before *Joseph Offley*, *John Herbert*, *John Bond*, *John Crosbie*, *Benjamin Hilton*, esquires, and others, their fellows, justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, come as well the said *Simon Harcourt*, who prosecutes, *&c.* as the said *Dorothy Smith*, in their proper persons; and the jurors of the jury impanelled by the said sheriff for this purpose, to wit, *Nathaniel Chandler*, *William Gunson*, *Robert Moore*, *William Giles*, *Robert Wheely*, *Edward Reynolds*, *Edward Hampsted*, *John Searle*, *William Ashman*, *Benjamin Mills*, *Richard Winch* and *William Weaver*, being called, come, who

Defendant pleads not guilty.

 being

being chosen, tried and sworn to speak the truth of and concerning the premises aforesaid, say upon their oath, that the said *Dorothy Smith* is guilty of the premises aforesaid in the indictment aforesaid above specified, above laid to her charge in manner and form as by the indictment aforesaid is above supposed against her: whereupon all and singular the premisses being seen and understood by the court here, it is considered by the court here, that the said *Dorothy Smith* do pay to the said lady the queen the sum of 15*l.* for her fine by the court here above laid upon her, according to the form of the statute in that case made and provided, for and by reason of the premises, whereof she the said *Dorothy Smith* as aforesaid is convicted, and that she the said *Dorothy Smith* be taken, *&c.* which said *Dorothy Smith* being present here in court, by the court aforesaid, is committed to the *New Prison* of the said lady the queen at *Clerkenwell* in the county aforesaid, there to remain until she shall pay the fine aforesaid, *&c.* And now to wit, on *Saturday* next after one month of *Easter* in this same term, before the said lady the queen at *Westminster* cometh the said *Dorothy Smith* in her proper person, who is committed to the marshal, *&c.* and she immediately saith, that in the record and process aforesaid, and also in the giving of the judgment aforesaid against her the said *Dorothy Smith*, there is manifest error in this, to wit, that the indictment aforesaid against her, and the matter in the same contained, are not sufficient in law to warrant the judgment against her now given, or to convict her of the trespass and offence aforesaid; therefore in that there is manifest error: there is also error in this, to wit, that where by the record aforesaid it appears that judgment upon the indictment aforesaid was given against her the said *Dorothy Smith* in form aforesaid, that judgment, by the law of this realm of *England*, ought to have been given for the same *Dorothy*, that she be thereof acquitted, and go thereupon without day: therefore in that there is manifest error. And the said *Dorothy* prays that the judgment aforesaid for the errors being in the record and process aforesaid may be reversed and annulled, and absolutely be had for nothing; and that she may be restored to the common law of this realm of *England*, and to all things which she hath lost upon the aforesaid occasion.

Verdict, defendant is guilty.

Fine 15*l.*

Committed to prison.

Error assigned.

Pleas before the Lady the Queen at Westminster *of* Easter *Term in the third Year of the Reign of the Lady* Ann, *now Queen of* England, &c.

The Queen *against* Best and others. 2 Ld. Raym. 1167.

Indictment for falsly charging one with being the father of a bastard child.

London, (to wit). HEretofore, that is to say, on *Friday* the 14th day of *January*, in the 2d year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, *&c.* at the general quarter-sessions of the peace of the lady the queen, holden for the city of *London*, at the *Guildhall* of the said city, and within the same city, before *John Parsons* knight, mayor of the city of *London*, *Robert Clayton* knight, *William Pritchard* knight, *William Gore* knight, aldermen in the city aforesaid, and *Salathiel Lovel*, one of the serjeants at law of the said lady the queen, and recorder of the said city, and others their fellows justices, assigned to keep the peace in the city aforesaid, and also to hear and determine divers felonies, trespasses, and other misde-

twelve jurors, honest and lawful men of the city of *Lond* aforesaid, then and there being sworn and charged to inquire for the said lady the queen for the body of the city aforesaid, it was presented, that *Richard Best*, late of *London* yeoman, *Philip Jackson*, late of *London* yeoman, *Richard Grimes*, late of *London* yeoman, and *Elizabeth Church*, late of *London* spinster, otherwise called *Elizabeth Ellis*, late of *London* spinster, otherwise called *Elizabeth Carter*, late of *London* spinster, being persons of evil name, fame and dishonest conversation, and not endeavouring to seek their living by honest labour, according to the laws of this kingdom of *England*, but compassing, devising and conspiring among themselves by what unlawful means they might unlawfully and unjustly obtain and acquire into their hands and possession the goods, chattels and money of the honest liege men and subjects of the said lady the queen, to maintain their dishonest and diabolical course of living, on the 18th day of *December* in the 2d year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, *&c.* falsly, unlawfully, wickedly and craftily contriving, intending and conspiring and de-

viss

viſing among themſelves to deceive and defraud one *Peter Pickering* the younger of *London* mercer, not only of his monies, but alſo to deprive him the ſaid *Peter* of his good name, fame, eſtate and credit, and to bring the ſaid *Peter* into the greateſt hatred, ſcandal, contempt and infamy amongſt all the liege men and ſubjects of the ſaid lady the queen, on the 18th day of *December* in the 2d year aboveſaid at *London* aforeſaid in the pariſh of Saint *Vedaſt*, otherwiſe *Foſter's*, in the ward of *Farringdon Within*, falſly, unlawfully, deceitfully, maliciouſly, and for the cauſe of wicked gain conſpired, contrived, conſulted and agreed among themſelves falſly, unjuſtly, wickedly and diabolically to charge and accuſe the ſaid *Peter Pickering* to be the father of a child whereof the ſaid *Elizabeth Ellis*, otherwiſe *Church*, otherwiſe *Carter*, was then pregnant, as they then and there pretended; and by the conſpiracy among them ſo as aforeſaid before had, then and there with force and arms, &c. they did falſly and maliciouſly affirm, and every one of them then and there did falſly and maliciouſly affirm, that he the ſaid *Peter* then lately before had carnal knowledge of the body of her the ſaid *Elizabeth Church*, otherwiſe *Ellis*, otherwiſe *Carter*, and had carnally known the ſaid *Elizabeth Ellis*, otherwiſe *Church*, otherwiſe *Carter*, and that he the ſaid *Peter* was the father of the pretended child whereof the ſaid *Elizabeth Church*, otherwiſe *Ellis*, otherwiſe *Carter*, then was pregnant, as ſhe aſſerted and pretended: and that fo. the further execution of the premiſes, they the ſaid *Richard Beſt*, *Philip Jackſon*, *Richard Grimes* and *Elizabeth Church*, otherwiſe *Ellis*, otherwiſe *Carter*, then and there agreed and concluded amongſt themſelves, that he the ſaid *Richard Beſt* ſhould go to the ſaid *Peter* and ſhould falſly, wickedly, maliciouſly, and for the ſake of wicked gain ſhould charge and accuſe him the ſaid *Peter*, that he the ſaid *Peter* then lately before had had carnal knowledge of the body of the ſaid *Elizabeth Church*, otherwiſe *Ellis*, otherwiſe *Carter*, and had carnally known her the ſaid *Elizabeth Church*, otherwiſe *Ellis*, otherwiſe *Carter*, and that he the ſaid *Peter* was the father of the ſaid pretended child whereof they pretended that ſhe the ſaid *Elizabeth* was pregnant. And the jurors aforeſaid upon their oath aforeſaid further ſay, that the ſaid *Richard Beſt* in execution of the premiſes, and according to the ſaid conſpiracy, conſultation and agreement among them the ſaid *Richard Beſt*, *Philip Jackſon*, *Richard Grimes* and *Elizabeth Church*, otherwiſe *Ellis*, otherwiſe *Carter*, as aforeſaid before had, afterwards, to wit, on the ſaid 18th day of *December* in the 2d year aforeſaid, at the pariſh and ward aforeſaid, and at divers other places within

the

the city aforesaid, with force and arms, &c. falsly, wickedly, maliciously, diabolically, and for the sake of wicked gain, in the hearing of many faithful liege men and subjects of the said lady the queen, charged and accused the said *Peter*, that he the said *Peter* then lately before had had carnal knowledge of the body of the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and had carnally known her the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, and that he the said *Peter* was the father of the said pretended child whereof they affirmed the said *Elizabeth Church*, otherwise *Ellis*, otherwise *Carter*, then was pregnant, to the great damage, scandal and defamation of the said *Peter Pickering* the younger, to the worst and most pernicious example of all others offending in the like case, and against the peace of the said lady the now queen, her crown and dignity; which said indictment the lady the now queen afterwards for certain causes hath caused to come to be determined before her: wherefore the sheriffs of *London* were commanded, that they should cause them to come to answer, &c. and now, to wit, on *Wednesday* next after five weeks of *Easter* in this same term before the lady the queen at *Westminster* come the aforesaid *William Best*, *Philip Jackson* and *Elizabeth Ellis*, by *Benedict Brown* their attorney, and having severally heard the indictment aforesaid, say, that they do not apprehend that the said lady the queen will or ought farther to impeach or occasion them the said *Richard*, *Philip* and *Elizabeth*, or any of them, for the premisses, because they say, that the indictment aforesaid is not sufficient in law, to which they and each of them have no necessity, nor are they bound by the law of the land in any manner to answer: and for the insufficiency thereof they pray judgment, and that they may be dismissed by the court here concerning the premisses, &c.

The indictment removed into *B. R.*

Defendants demur.

And *Samuel Astry*, knt. coroner and attorney of the lady the queen, in the court of the said queen before the queen herself, who prosecutes for the said lady the queen in this behalf for the said lady the queen saith, that the indictment aforesaid, and the matter therein contained, are good and sufficient in law to compel them the said *Richard Best*, *Philip Jackson* and *Elizabeth Ellis* to answer the said indictment; wherefore for want of a sufficient answer in this behalf he prays judgment, and that they by the court here may be convicted of the premisses, &c.

Joinder in demurrer.

By Indictment, of the Term of Saint Hilary *in the third Year of the Lady* Ann, *Queen of* England, &c.

The Queen *against* the Inhabitants of Stretford. 2 Ld. Raym. 1169.

Error on an indictment for not repairing an highway.

Lancashire, (to wit) HEretofore, that is to say, on the 30th day of *June* in the third year of the reign of the lady *Ann*, by the grace of God, queen of *England, Scotland, France* and *Ireland*, defender of the faith, &c. before the said lady the queen at *Westminster*, the said lady the queen sent to the great session of the county of *Lancaster*, and also to the keepers of her peace in the county aforesaid, and to her justices, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, her writ close in these words, to wit, *Ann*, by the grace of God, of *England, Scotland, France* and *Ireland* queen, defender of the faith, &c. To the justices of the great session of the county of *Lancaster*, and also to the keepers of our peace in the county aforesaid, and to our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, greeting: because in the record and process, and also in the giving of judgment of a certain indictment made before you, or some of you, against the men, inhabitants in *Stretford* in the county aforesaid, for certain trespasses, contempts and nusances for not repairing and amending our highway within *Stretford* aforesaid, whereof they are indicted, and thereupon are convicted by a certain jury of the country thereupon taken between us and the aforesaid inhabitants, as it is said, manifest error hath intervened, to the great damage of the said inhabitants, as from their complaint we have received information: we willing that the error (if any there shall be) in due manner be corrected, and that full and speedy justice be done to the same inhabitants in this behalf, command you, if judgment thereupon be given, then that you send to us the record and process aforesaid, with all things touching the same, under your seals, or the seal of one of you, distinctly and openly, and this writ, so that we may have them from the day of Saint *Michael* in three weeks, wheresoever we shall then be in *England*, that inspecting the record and process

cess aforesaid, we may further do thereupon, for the correcting that error, that which of right, and according to the law and custom of our realm of *England*, shall be so be done. Witness ourself at *Westminster* the 30th day of *June* in the third year of our reign.

The execution of this writ appears in a certain schedule to this writ annexed, *Christopher Dauntesey*, *Edward Chessham*; which said writ and record in the same mentioned were returned and certified as follows:

Lancashire, (to wit) AT the general quarter-session of the peace of the said lady the queen, holden at *Lancaster* in and for the county palatine of *Lancaster*, on *Tuesday*, to wit, the 13th day of *July* in the 2d year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *Edward Wilson*, esq; *Charles Rigby*, esq; *William Buckley*, esq; and *Thomas Sheirson*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county. The same general quarter-sessions of the peace is adjourned by the said justices of the said lady the queen, being in the court, until *Thursday*, to wit, the 15th day of the same month of *July*, to be holden at *Preston* in *Amounderness*, in and for the county aforesaid; at which said session of the peace of the said lady the queen, holden by adjournment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the county aforesaid, on the said *Thursday* the 15th day of *July* in the 2d year abovesaid, before *Richard Fleetwood*, esq; *William Farrington*, esq; *Richard Longworth*, esq; and *Thomas Foster*, esq; justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. The said session of the peace of the said lady the queen is further adjourned by the same justices of the said lady the queen last mentioned, being in the court, until *Monday* the 19th day of the same month of *July*, to be holden at *Ormeskirke*, in and for the county aforesaid; at which said session of the peace of the said lady the queen, holden by that adjournment at *Ormeskirke* aforesaid, in and for the said county, on the said *Monday*, to wit, the 19th day of *July* in the 2d year abovesaid, before the honourable *Charles Stanley*, esq; *Thomas Stanley*, bart. *Roger Bradshaigh*, bart. *Richard Bold*, esq; *William Farrington*, esq; *Robert Mawdesley*, esq; *Thomas Ashurst*, esq; *Jonathan Blackburne*,

Quarter sessions adjourned to *Preston*.

Adjourned to *Ormskirke*.

burne, esq; and *Thomas Johnson*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. That sessions of the peace is adjourned by the same justices of the said lady the queen last named, being in the court, until *Thursday*, to wit, the 22d day of the same month of *July*, to be holden at *Manchester*, in and for the county aforesaid: at which said session of the peace of the said lady the queen, holden by that adjournment at *Manchester* aforesaid, in and for the county aforesaid, on the said *Thursday* the 22d day of *July* in the 2d year abovesaid, before *George Birch*, esq; *Richard Entwisle*, esq; *Charles Hilton*, esq; and *Christopher Dauntesey*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the county aforesaid.

Further adjourned to *Manchester*.

An inquisition is taken at *Manchester* aforesaid, in and for the county aforesaid, before the justices last named, on the said 22d day of *July* in the 2d year abovesaid, by the oath of *Daniel Gaskell* of *Clifton cum Pendlebury*, gent. *Thomas Moss* of *Manchester*, gent. *John Holme* of *Heaton Norris*, gent. *Jonathan Dawson* of *Manchester*, gent. *Robert Ravald* of *Broughton*, gent. *William Booth* of *Ryton*, gent. *John Booth* of the same, gent. *Michael Flitcraft* of *Manchester*, gent. *John Odcroft* of the same, gent. *John Rideing* of *Chetham*, gent. *Richard Hill* of *Hundersfield*, gent. *William Sharlock* of *Barton*, gent. *James Bradshaw* of the same, gent. *James Chadwick* of the same, gent. *John Gee* of the same, gent. *Edmund Smetharst* of *Radcliffe*, gent. and *William Hampson* of the same, gent. honest and lawful men of the county aforesaid, then and there sworn and charged to inquire for the said lady the queen and the body of the county aforesaid, who say, and present upon their oath, that the queen's highway within *Stretford* in the county of *Lancaster*, between the west end of a certain lane within *Urmeston* in the county aforesaid, and a certain place called *Stretford Cross*, for the space of fifty roods, or thereabouts, leading between the village of *Flixton* in the county aforesaid, and the market-town of *Stockport* in the county of *Chester*, on the 11th day of *January* in the first year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. at *Stretford* aforesaid in the county of *Lancaster* aforesaid, was, and yet is very dirty and muddy, and so narrow, that the liege-men and subjects

The bill of indictment found.

of

of the said lady the queen, by, and through the said way, by themselves, or with their horses, oxen, carts and carriages, cannot go, return, pass, ride, and labour, without great peril of their lives and goods, to the common nusance of all the liege-people and subjects of the said lady the queen, whom it concerns, to go, return, pass, ride, and labour, by, and through the said queen's highway, and against the peace of the said lady the queen, &c. And that the inhabitants of *Stretford* aforesaid, from time whereof the memory of man is not to the contrary, have used, and been accustomed, and ought to repair and amend the same way, as often as, and when need should be.

At a quarter session at *Lancaster.*

Afterwards, that is to say, at the general quarter-sessions of the peace of the lady the queen, holden at *Lancaster*, in and for the county palatine of *Lancaster* aforesaid, on *Tuesday*, to wit, the 11th day of *January* in the 2d year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *Edward Wilson*, esq; *Thomas Sheirson*, esq; and *John Hodgson*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, that same general quarter-session of the peace is adjourned by the said justices of the said lady the queen until *Thursday*, to wit, the 13th day of the same month of *January*, to be holden at *Preston* in *Amounderness*, in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen, holden by adjournment aforesaid at *Preston* in *Amounderness* aforesaid, in and for the county aforesaid, on the said *Thursday*, to wit, the 13th day of *January* in the 2d year abovesaid, before *Richard Fleetwood*, esq; *Thomas Rigby*, esq; *Edward Rigby*, esq; and *Richard Longworth*, esq; justices of the said lady the queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, the said general quarter-session of the peace of the lady the queen is further adjourned by the same justices of the said lady the queen last named until *Monday*, to wit, the 17th day of the same month of *January*, to be holden at *Wygan*, in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen, holden by that adjournment at *Wygan* aforesaid in the county aforesaid on *Monday*, to wit, the 17th day of *January* in the 2d year abovesaid, before *Thomas Stanley*, bart. *William Farrington*, esq; *Thomas*

Adjourned to *Preston.*

Further adjourned to *Wygan.*

Ashurst

Ashurst, esq; *Jonathan Blackburne*, esq; *Charles Hilton*, esq; and *Jonathan Case*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county. That general quarter-session of the peace of the said lady the queen is further adjourned by the same justices of the said lady the queen last named, until *Thursday*, to wit, the 20th day of the same month of *January*, to be holden at *Manchester*, in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen holden by that adjournment at *Manchester* aforesaid, in and for the county aforesaid, on the said *Thursday* the 20th day of *January* in the 2d year abovesaid, before *James Holt*, esq; *Joshua Horton*, esq; *Richard Entwisle*, esq; *Charles Hilton*, esq; and *Christopher Dauntesey*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, *John Sherlock* and *Thomas Moss*, two of the inhabitants of the town of *Stretford* aforesaid, in the name of all the inhabitants of the same town, come and complain that they, by colour of the premisses in the indictment aforesaid specified, are greatly vexed and disquieted, and in this unjustly, because they protest that the indictment aforesaid, and the matter in the same contained, are not sufficient in law, to which they have no necessity, neither are they bound by the law of the land to answer: nevertheless for plea they say, that the inhabitants of *Stretford* aforesaid are not guilty of the premisses laid to their charge; and of this they put themselves upon the country; and *Nicholas Starkey*, esq; attorney general of the said lady the queen of her county palatine of *Lancaster* aforesaid, who prosecutes for the said lady the queen in this behalf likewise: whereupon the sheriff of the county aforesaid is commanded, that he do not omit, because of any liberty of his county aforesaid, but that he cause to come before the justices of the said lady the queen, at the general quarter-session of the peace of the said lady the queen, after the feast of *Easter* next coming, to be holden at *Manchester* aforesaid, twelve, &c. by whom, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *Nicholas Starkey*, esq; who prosecutes, &c. as to the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the said

Further adjourned to *Manchester*.

Two of the inhabitants in the name of all plead not guilty.

Issue joined upon *not guilty*.

Venire awarded.

ſaid town; at which ſaid general quarter-ſeſſion of the peace, to wit, at the general quarter-ſeſſion of the peace of the lady the queen, holden at *Lancaſter*, in and for the county palatine of *Lancaſter* aforeſaid, on *Tueſday*, to wit, the 25th day of *April* in the third year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *Roger Kirby*, eſq; *Edward Wilſon*, eſq; *Thomas Sheirſon*, eſq; *John Hodgſon*, eſq; and *William Buckley*, eſq; juſtices of the ſaid lady the queen, aſſigned to keep the peace of the ſaid lady the queen in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſame county, that ſame general quarter-ſeſſion of the peace of the ſaid lady the queen is adjourned by the ſaid juſtices of the ſaid lady the queen until *Thurſday*, to wit, the 27th day of the ſame month of *April*, to be holden at *Preſton* in *Amounderneſs*, in and for the county aforeſaid; at which ſaid general-ſeſſion of the peace of the ſaid lady the queen, held by adjournment aforeſaid at *Preſton* in *Amounderneſs* aforeſaid, in and for the county aforeſaid on the ſaid *Thurſday*, to wit, the 27th day of *April* in the 3d year aboveſaid, before *Richard Fleetewood*, eſq; *William Farrington*, eſq; *Thomas Rigby*, eſq; *Richard Longworth*, eſq; and *Thomas Foſter*, eſq; juſtices of the ſaid lady the queen, aſſigned to keep the peace of the ſaid lady the queen in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſame county, the ſaid general quarter ſeſſion of the peace of the ſaid lady the queen is further adjourned by the ſame juſtices of the ſaid lady the queen laſt named, until *Monday*, to wit, the firſt day of *May* in the third year aboveſaid, to be holden at *Ormeſkirke*, in and for the county aforeſaid; at which ſaid ſeſſion of the peace of the ſaid lady the queen, holden by that adjournment at *Ormeſkirke* aforeſaid, in and for the county aforeſaid, on the ſaid *Monday*, to wit, the firſt day of *May* in the third year aboveſaid, before *Thomas Stanley*, bart. *William Farrington*, eſq; *Thomas Aſhurſt*, eſq; *Jonathan Blackburne*, eſq; and *Jonathan Caſe*, eſq; juſtices of the ſaid lady the queen, aſſigned to keep the peace of the ſaid lady the queen in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed in the ſame county. That general quarter-ſeſſion of the peace of the ſaid lady the queen is further adjourned by the ſame juſtices of the ſaid lady the queen laſt named, until *Thurſday*, to wit, the 4th day of *May* in the third year aboveſaid, to be holden at *Mancheſter*, in

Lancaſter ſeſſion.

Adjourned to *Preſton*.

Further adjourned unto *Ormeſkirke*.

Further adjourned to *Mancheſter*.

in and for the county aforesaid; at which said general quarter-session of the peace of the said lady the queen, holden by that adjournment at *Manchester* aforesaid, in and for the county aforesaid on *Thursday* the 4th day of *May* in the third year abovesaid, before *Ralph Asheton*, bart. *Peter Egerton*, esq; *Richard Entwisle*, esq; *Christopher Dauntesey*, esq; and *Charles Hilton*, esq; justices of the said lady the queen, assigned to keep the peace of the said lady the queen in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, come as well the said *Nicholas Starkey*, esq; who prosecutes for the said lady the queen in this behalf, as the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the same town, in their proper persons; and the jurors by the sheriff aforesaid being called and impanelled for this purpose, certain of them, to wit, *Peter Locker* of *Westhoughton* in the county of *Lancaster* aforesaid, gent. *Robert Lee* of the same, gent. *Samuel Gooden* of *Heaton Norres* in the county aforesaid, gent. *Richard Clegg* of *Spotland* in the county aforesaid, gent. *John Buckley* of *Tottington* in the county aforesaid, gent. *James Hogkinson* of *Ampull* in the county aforesaid, gent. *Edmund Cooper* of *Middleton* in the county aforesaid, gent. came and are sworn upon the jury: and because the rest of the jurors of the jury did not appear, therefore others of the by-standers, by the sheriff of the county aforesaid being chosen, at the request of the said *Nicholas Starkey*, esq; attorney-general of the said lady the queen, and by the command of the justices, are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case made and provided; which said jurors so newly appointed, to wit, *Samuel Wareing* of *Bury* in the county aforesaid, gent. *Robert Jepson* of *Ardwicke* in the county aforesaid, gent. *John Bolton* of *Tong* in the county aforesaid, gent. *William Smethurst* of *Prestwich* in the county aforesaid, gent. and *Robert Woolsencroft* of *Falsworth* in the county aforesaid, gent. likewise come, and are sworn upon the jury with the jurors aforesaid impanelled: whereupon publick proclamation being made here in court for the said lady the queen, as the custom is, that if there was any one who would inform the said justices of the lady the queen, the queen's serjeant at law, the queen's now attorney general, or the jurors sworn aforesaid, he might come forth, and he should be heard: and hereupon it is proceeded to the taking of the jury aforesaid, as well by the jurors aforesaid first impanelled and sworn, as by the

Some of the jury sworn.

Tales.

 other

other jurors aforesaid now appearing, who being chosen, tried and sworn to speak the truth concerning the premisses, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that the said inhabitants of *Stretford* aforesaid are guilty of the premisses, in manner and form as by the indictment aforesaid for the said lady the now queen is above supposed against them: whereupon all and singular the premisses being seen and understood by the court here, it is considered by the court, that the said inhabitants of *Stretford* aforesaid do forfeit to the said lady the queen, by occasion of the nusance aforesaid in not repairing the queen's highway aforesaid, the sum of forty pounds. And afterwards, for certain causes the said justices specially moving, it is ordered, that the execution of that judgment be respited until the seventh day of *July* next coming, *&c.* And now, to wit, on *Wednesday* next after fifteen days of *Easter* in this same term, before the said lady the queen at *Westminster*, come the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the same town, by *Francis Pember* their attorney, and say, that in the record and process, and also in the giving of judgment against the inhabitants of *Stretford* aforesaid, there is manifest error, in *this*, to wit, that the indictment aforesaid, and the matter in the same contained, are not sufficient in law to warrant the judgment now given against them, or to convict them of the trespass, contempt and offence aforesaid; therefore in *that* there is manifest error: there is also error in *this*, to wit, that where by the record aforesaid it appears that judgment upon the indictment aforesaid was given against the inhabitants of *Stretford* aforesaid in form aforesaid, *that* judgment by the law of the land of this realm of *England* ought to be given for the said inhabitants, that they should be acquitted thereof, and go thereupon without day: therefore in *that* there is manifest error. And the said *John Sherlock* and *Thomas Moss*, two of the inhabitants of *Stretford* aforesaid, in the name of all the inhabitants of the same town, pray that the judgment aforesaid for these errors, and others, being in the record aforesaid, may be reversed, annulled, and wholly had for nothing; and that they may be restored to the common law of this realm of *England*, and to all things which they have lost by the occasion aforesaid.

Verdict against the defendants.

Judgment.

Fine 40*l.*

Error assigned.

By Indictment, of Easter *Term, in the third Year of the Reign of the Lady* Ann, *Queen of* England, &c.

The Queen *against* Sainthill. 2 Ld. Raym. 1174.

Error on an indictment for not repairing a bridge *ratione tenuræ*.

THE lady the queen hath sent to the keepers of her peace in the county of *Devon*, and to her justices, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, her writ-close in these words, to wit, *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. To the keepers of our peace in the county of *Devon*, and to our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, and to every of them, greeting: because in the record and process, and also in the giving of judgment against *Samuel Sainthill*, for certain trespasses, contempts and nusances, whereof the same *Samuel* is indicted before you, and thereupon is convicted by a certain jury of the country thereupon taken between us and the said *Samuel*, as it is said, manifest error hath intervened, to the great damage of him the said *Samuel*, as from his complaint we have received information: we willing that the error, if any there shall be, in due manner be corrected; and that full and speedy justice be done to the said *Samuel* in this behalf, command you, if judgment be thereupon given, then that you send to us the record and process aforesaid, with all things touching the same, under your seals, or the seal of one of you, distinctly and openly, and this writ, so that we may have them on the octave of Saint *Hilary*, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may further do thereupon, for correcting that error, *that* which of right, and according to the law and custom of our realm of *England*, shall be to be done. Witness ourself at *Westminster* the 19th day of *November* in the 2d year of our reign.

Which said writ, and the record in the same mentioned, were returned and certified as follows, to wit, The record and process of conviction, whereof mention is within made, with all things touching the same, we send before the lady the queen, wheresoever, &c. at the day within mentioned,

3 in

in a certain record to this writ annexed, as it is within commanded. The answer of two of the justices within written, *Thomas Putt*, *Nicholas Martyn*.

Devonshire, (to wit) BE it remembered, that at the general quarter-session of the peace of the lady the now queen, holden at the castle of *Exeter*, in and for the said county of *Devon*, on the 6th day of *April* in the 2d year of the reign of the lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. before *Thomas Putt*, bart. *Nicholas Martyn*, esq; and *Richard Reynell*, esq; and others their fellows, justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, by the oath of *John Bridge*, gent. *John Buwdon*, gent. *Thomas Clarke*, gent. *Robert Stone*, gent. *George Gibbs*, gent. *John Seward*, gent. *Francis Searle*, gent. *Thomas Pearse*, gent. *John Northcott*, gent. *William Tickle*, gent. *John Whittey*, gent. *Thomas Sowdon*, gent. *William Elliot*, gent. *Edward Browne*, gent. *Philip Osmond*, gent. and *Thomas Limbrey*, gent. honest and lawful men of the county aforesaid, then and there returned, tried, sworn and charged to inquire for the said lady the queen, and the body of the county aforesaid, it is presented in manner and form following, to wit, *Devonshire*, to wit, The jurors for the lady the queen upon their oath present, that *Samuel Sainthill* of *Bradmuch* in the county of *Devon* aforesaid, esq; on the first day of *April* in the 2d year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. and at divers other days and times, as well before as afterwards, with force and arms, &c. at *Bradmuch* aforesaid in the county aforesaid, suffered the West part or end of a certain common footbridge, commonly called *Longbridge*, situate upon the river of *Culme*, in a certain *common footway* there, leading from the town of *Bradmuch* aforesaid, towards, and unto the town of *Honiton* in the same county, and containing in itself half of the same bridge, to be so ruinous, broken and in decay, for want of reparation and amendment of the same part or end, so that by reason thereof, the liege-people and subjects of the said lady the queen cannot go, pass over, or labour, in, and upon the said bridge, as they ought, and used to do, without great danger, to the great damage and common nusance of the same subjects and liege-people, and against the peace of the said lady the now queen, her crown and dignity. And they further present, that the said *Samuel*

The indictment found.

Sainthill, by reason of his tenure of certain lands within the parish of *Bradnuch* aforesaid, commonly called *Oxenford*, lying near to the same bridge, ought and used to repair and amend the said part or end of that bridge as often as there hath been need: whereupon it is commanded by the same court to the sheriff of the county aforesaid, that he do not omit, &c. but that he cause the said *Samuel Sainthill* to come to answer, &c. Whereupon afterwards, that is to say, at the general quarter-sessions of the peace of the said lady the queen, holden at the castle of *Exeter*, in and for the county of *Devon* aforesaid, on the 13th day of *July* in the 2d year of the reign of the said lady the now queen, before *Thomas Putt*, bart. *Nicholas Martyn*, esq; and *Richard Reynell*, esq; and others their fellows justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the county aforesaid, cometh the said *Samuel Sainthill* in his proper person, and having heard the indictment aforesaid, the said *Samuel* saith, that he is not guilty thereof; and of this he puts himself upon the country; and *William Martyn*, esq; then and there clerk of the peace of the county aforesaid, who prosecutes for the said lady the queen in this behalf likewise: therefore let a jury come before the justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, at the general quarter-session of the peace of the said lady the queen, to be holden at the castle of *Exeter*, in and for the county of *Devon* aforesaid, on *Tuesday* next after the feast of Saint *Michael* the archangel then next coming, who neither, &c. to recognize, &c. because as well, &c. The same day is given as well to the said *William Martyn*, who prosecutes, &c. as to the said *Samuel Sainthill*: at which said general quarter-session of the peace of the said lady the queen, holden at the castle of *Exeter*, in and for the county of *Devon* aforesaid, on *Tuesday* next after the feast of Saint *Michael* the archangel, in the 2d year of the reign of the said lady the now queen abovesaid, before *Thomas Putt*, bart. *Nicholas Martyn*, esq; and *Richard Reynell*, esq; and others their fellows, justices of the said lady the queen, assigned to keep the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, come as well the said *William Martyn*, who prosecutes, &c. in his proper person, as the said *Samuel Sainthill* in his proper person; and the jurors of the jury aforesaid, by *George Parker*, esq;

Defendant pleads Not guilty.

Issue joined.

esq; then sheriff of the county aforesaid, to this being impanelled, returned and called, to wit, *John Kingdome*, *Thomas Collyer*, *Sydrach Baskervill*, *William Barne*, *John Mountstephen*, *Arthur Steevens*, *Ambrose Bence*, *Francis Dennis*, *Nicholas Markell*, *Stephen Lang*, *William Bidgood* and *George Perry*, honest and lawful men of the county aforesaid, likewise come, who being chosen, tried and sworn to speak the truth concerning the premisses, say upon their oath, that the said *Samuel Sainthill* is guilty of the trespass and contempt aforesaid in the said indictment above laid to his charge: therefore it is considered by the same court, that the said *Samuel Sainthill* be taken to satisfy to the said lady the queen of his fine by occasion of the trespass and contempt aforesaid: and the said *Samuell Sainthill* then and there prayed that he might be admitted to a fine with the said lady the queen, by the occasion aforesaid; and thereof puts himself in the mercy of the said lady the queen, and the fine of the said *Samuel* is assessed by the justices aforesaid to ten pounds. And the sheriff of the county aforesaid is commanded by the said justices that he do not omit, *&c.* but that he distrain the said *Samuel Sainthill* by all his lands, *&c.* and that of the issues, *&c.* so that he do repair and amend the said West part or end of the said bridge at his own proper expences, costs and charges, if it be not before repaired and amended by him the said *Samuel*; and in what manner, *&c.* And now, to wit, on *Wednesday* next after fifteen days of *Easter* in this same term, before the lady the queen at *Westminster*, cometh the said *Samuel Sainthill* in his proper person, and saith, that in the record and process aforesaid, and also in the giving of the judgment aforesaid against him the said *Samuel Sainthill*, there is manifest error, in this, to wit, that the indictment aforesaid against him the said *Samuel Sainthill*, and the matter in the same contained, are not sufficient in law to warrant the judgment against him the said *Samuel Sainthill* now given, or to convict him of the trespass, contempt and offence aforesaid; therefore in that there is manifest error: there is also error in this, to wit, that where by the record aforesaid it appears that judgment upon the said indictment was given against him the said *Samuel Sainthill* in form aforesaid; that judgment by the law of the land of this realm of *England* ought to be given for the same *Samuel Sainthill*, to wit, that he be thereof acquitted, and go thereupon without day: therefore in that there is also manifest error. And the said *Samuel Sainthill* prays that the judgment aforesaid for these errors, and others, being in the record aforesaid, may be reversed and annulled, and wholly had for nothing; and that he may

Verdict guilty.

Fined 10*l*.

Error assigned.

be restored to the common law of this realm of *England*, and to all things which he hath lost by occasion of the judgment aforesaid.

Pleas before our Lady the Queen at Westminster *of the Term of the Holy* Trinity *in the fourth Year of the Reign of* Ann, *Queen of* England, &c.

Bond *against* Barnes. 2 Ld. Raym. 1205.

London, (to wit) BE it remembered, that heretofore, to wit, in the term of *Easter* last past, before the lady the queen at *Westminster* came *William Bond* by *William Smith* his attorney, and brought here into the court of the said lady the queen then there his certain bill against *Edward Barnes*, in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *William Bond* complains of *Edward Barnes*, in the custody of the marshal of the *Marshalsea* of the lady the queen, being before the queen herself, for that, (to wit) That whereas the said *Edward* on the 2d day of *April* in the 4th year of the reign of the lady *Ann*, now queen of *England*, &c. at *London* aforesaid, to wit, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, was indebted to the said *William Bond* in one hundred pounds of lawful money of *England*, for the like sum of money of him the said *William*, by him the said *William*, at the special instance and request of him the said *Edward*, to him the said *Edward* before that time lent and advanced; and being thereof so indebted, he the said *Edward*, in consideration thereof afterwards, to wit, the same day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised, that he the said *Edward* the said one hundred pounds to the same *William*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterwards, to wit, the same day and year last abovesaid, at *London* aforesaid, in the parish and ward aforesaid, the said *Edward* was likewise indebted to the said *William Bond* in other one hundred pounds of the like money of *England* aforesaid, for so much other money of him the said *William* by the

the said *Edward*, for and to the use of him the said *William*, before that time had and received; and being thereof so indebted, he the said *Edward* in consideration thereof afterward, to wit, the same day and year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that he the said *Edward* the said one hundred pounds last mentioned to the said *William Bond*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: nevertheless the said *Edward* his said several promises and undertakings in form aforesaid made not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *William Bond* in this behalf, the said several sums of money, or any part thereof, to the said *William* hath not yet paid, nor hath hitherto in any manner satisfied him for the same, although to do this he the said *Edward* afterwards, to wit, the same day and year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, was requested by him the said *William Bond*; whereupon the same *William* saith that he is injured, and hath sustained damage to the value of one hundred pounds; and thereupon he brings suit, &c.

Special imparlance.

And now here at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *Edward* (saving to himself all and all manner of exceptions as to the bill aforesaid) had leave to imparl to the said bill, and then to answer, &c. before the lady the queen at *Westminster* come as well the said *William Bond* by his attorney aforesaid, as the said *Edward Barnes* by *John Greene* his attorney; and the said *Edward* defends the force and injury, &c. and prays judgment of the declaration aforesaid, because he says that the said *William Bond* heretofore, that is to say, after the said 2d day of *April* in the 4th year of the reign of the said lady *Ann*, now queen of *England*, &c. to wit, on the 22d day of *May* in the term of *Easter* last past in the court of the said lady the queen of the bench at *Westminster* in the county of *Middlesex*, impleaded him the said *Edward* of the said one hundred pounds; and the same *Edward* in the same court of the lady the queen of the bench, before the justices of the same court appearing by *Edward Hale* his then attorney, the said *William Bond* by *Stephen Hales* his then attorney in the same court declared against him the said *Edward Barnes*, for that, to wit, that whereas the said *Edward Barnes* on the second day of *April* in the 4th year of the reign of the lady *Ann*, now queen of *England*, &c. at *London* aforesaid, to wit, in the parish of the *Blessed*

Pleads another action pending for the same debt.

Mary

Mary of the Arches in the ward of *Cheape*, was indebted to the said *William* in one hundred pounds of lawful money of *England*, for the like sum of money of him the said *William*, by him the said *William*, at the special instance and request of him the said *Edward*, to him the said *Edward* before that time lent and advanced; and being thereof so indebted, he the said *Edward*, in consideration thereof afterwards, to wit, the same day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised, that he the said *Edward*, the said one hundred pounds, to the same *William*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterwards, to wit, the same day and year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, the said *Edward* was likewise indebted to the said *William Bond* in other one hundred pounds of the like money of *England* aforesaid, for so much other money of him the said *William* by the said *Edward*, for and to the use of him the said *William*, before that time had and received; and being thereof so indebted, he the said *Edward* in consideration thereof afterward, to wit, the same day and year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *William Bond* then and there faithfully promised that he the said *Edward* the said one hundred pounds last mentioned to the said *William Bond*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: nevertheless the said *Edward* his said several promises and undertakings in form aforesaid made not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same *William Bond* in this behalf, the said several sums of money, or any part thereof, to the said *William* had not then paid, nor had then in any manner satisfied him for the same, although to do this he the said *Edward* afterwards, to wit, the same day and year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, was requested by him the said *William Bond*; whereupon the same *William* said that he was injured, and sustained damage to the value of one hundred pounds; and thereupon he then brought suit, &c. as by the record thereof in the said court of the said lady the queen of the bench at *Westminster* in the county of *Middlesex* aforesaid remaining not discontinued or determined, more fully appears: and this he is ready to verify by the record thereof, as the court shall consider: whereupon he prays judgment of the declaration aforesaid now here pending in court for the same cause, and that the said declaration may be quashed, &c.

And

And the said *William Bond* saith, that he by any thing by the said *Edward* above in pleading alledged ought not to be barred from having his said action thereof against the said *Edward*, because he saith, that the said plea by the said *Edward* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to bar him the said *William* from having his said action thereof against the said *Edward*, to which he the said *William* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, he the said *William Bond* prays judgment and his damages by occasion of the premisses aforesaid, to be adjudged to him, &c.

Demurrer.

And the said *Edward* saith, that the plea aforesaid by him the said *Edward* in manner and form aforesaid above pleaded, and the matter in the same contained are good and sufficient in law to bar him the said *William* from having his said action against him the said *Edward*; which said plea, and the matter in the same contained, he the said *Edward* is ready to verify and prove, as the court, &c. And because the said *William* to that plea hath not answered, nor hath hitherto in any manner denied the same, he the said *Edward* as before prays judgment, and that the said *William* may be barred from having his said action thereof against him the said *Edward*, &c. But because the court of the said lady the queen now here is not yet advised of giving their judgment of and concerning the premisses, day thereupon is given to the parties aforesaid before the lady the queen at *Westminster*, until ———— next after ———— to hear their judgment of and concerning the premisses, for that the court of the said lady the queen now here are not yet thereof, &c.

Joinder in demurrer.

Pleas before our Lady the Queen at Westminster *of the Term of the Holy* Trinity *in the fourth Year of the Reign of the Lady* Ann, *now Queen of* England, &c.

Wallis *against* Lewis. 2 Ld. Raym. 1215.

London, (to wit) BE it remembered, that heretofore, to wit, in the term of *Easter* last past, before the lady the queen at *Westminster*, came *Elizabeth Wallis*, widow, executrix of the last will and testament of *Edward Wallis* her

Action by an executrix for monies of the testator received (by defendant) after his death to the plaintiff's

u[illegible]as executor, [illegible]ithout any *profert* of the letters testamentary.

her late husband, deceased, by *Richard Asbe* her attorney, and brought here into the court of the said lady the queen then there her certain bill against *Thomas Lewis*, in the custody of the marshal, &c. of a plea of trespass upon the case: and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London* (to wit) *Elizabeth Wallis*, widow, executrix, of the last will and testament of *Edward Wallis* her late husband, deceased, complains of *Thomas Lewis*, in the custody of the marshal of the *Marshalsea* of the lady the queen, being before the queen herself, for that, (to wit) that whereas the said *Thomas* on the first day of *March* in the year of our Lord 1704, at *London* aforesaid, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, was indebted to the said *Elizabeth* in fifty pounds and eight shillings of lawful money of *England*, for divers sums of money by the said *Thomas* to the use of her the said *Elizabeth*, as executrix of the aforesaid *Edward*, by the said *Thomas* before that time had and received; and being thereof so indebted, he the said *Thomas*, in consideration thereof afterwards, to wit, the same day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, assumed upon himself, and to the same *Elizabeth* then and there faithfully promised that he the said *Thomas* the said fifty pounds and eight shillings to the said *Elizabeth*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy. And also whereas afterward, to wit, the same day and year abovesaid, at *London* aforesaid, in the parish and ward aforesaid, the said *Thomas* was indebted to the said *Elizabeth* in other fifty pounds and eight shillings of like lawful money of *England*, for money by him the said *Thomas*, to the use of her the said *Elizabeth*, as executrix of the said *Edward*, before that time had and received; and being so indebted, he the said *Thomas*, in consideration thereof afterward, to wit, the same day and year last mentioned, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Elizabeth* then and there faithfully promised, that he the said *Thomas* the said fifty pounds and eight shillings last mentioned, to the said *Elizabeth*, when he should be thereunto afterward requested, would well and faithfully pay and satisfy: nevertheless the said *Thomas*, his several promises and undertakings aforesaid in manner aforesaid made, not at all regarding, but contriving and fraudulently intending, craftily and subtilly, to deceive and defraud the said *Elizabeth* in this behalf, the said several sums of money, or any part thereof, to the said *Elizabeth* hath not paid, or in any manner satisfied her for the same, although to do this, the said

Thomas

Thomas afterward, to wit, the 20th day of *March* in the fourth year abovesaid, at *London* aforesaid in the parish and ward aforesaid was requested by the said *Elizabeth*, but the same to pay to her hath hitherto absolutely refused, and yet doth refuse, to the damage of her the said *Elizabeth* of one hundred pounds; and thereupon she brings suit, &c.

Special imparlance.

And now here at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *Thomas* (saving to himself all and all manner of exceptions as to the bill aforesaid) had leave to imparl to the said bill, and then to answer, &c. before the lady the queen at *Westminster* come as well the said *Elizabeth* by her attorney aforesaid, as the said *Thomas* by *Joseph Taylor* his attorney; and the said *Thomas* defends the force and injury, &c. and says, that he the said *Thomas* ought not to be compelled to answer to the said bill of the said *Elizabeth*, because he says, that the said *Elizabeth* heretofore, to wit, in the term of Saint *Hilary* last past in the court of the lady the queen of the bench at *Westminster*, before the justices of the said lady the queen of the bench there, impleaded the said *Thomas* in a certain plea of trespass upon the case, and for the same cause in the declaration aforesaid abovementioned, as by the record thereof in the same court remaining appears; and that the parties aforesaid, to and in the plea aforesaid in the said court of the bench, and the said *Elizabeth* the now plaintiff, and the said *Thomas*, are the same persons, and not others, nor different, and that the plea aforesaid in the said court of the bench yet remains undetermined; and this he is ready to verify: wherefore he prays judgment if he ought to be compelled to answer to the bill aforesaid, &c.

Plea another action pending for the same cause.

And the said *Elizabeth* saith, that by any thing by the said *Thomas* above in pleading alledged, the said *Thomas* ought to be compelled to answer to the said bill of her the said *Elizabeth*, because she says that there is not any such record of the plea aforesaid had in the said court of the said lady the queen of the bench at *Westminster* aforesaid existing, as the said *Thomas* above in pleading hath alledged; and this she is ready to verify: whereupon she prays judgment, and that the said *Thomas* may answer to the said bill of her the said *Elizabeth*, &c.

No such record.

And the said *Thomas* saith, that the plea aforesaid by the said *Elizabeth* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are not sufficient in law to compel him the said *Thomas* to answer to the bill of her the said *Elizabeth* aforesaid; and that he to that plea in manner and form aforesaid above pleaded hath

Demurrer.

no

no neceſſity, neither is he bound by the law of the land in any manner to anſwer; and this he is ready to verify: wherefore for want of a ſufficient replication of her the ſaid *Elizabeth* in this behalf, he the ſaid *Thomas* as before prays judgment, and that the ſaid *Elizabeth* may thereupon be barred from having an anſwer to her ſaid bill againſt him the ſaid *Thomas*, *&c.*

Joinder in demurrer.

And the ſaid *Elizabeth* ſaith, that the plea aforeſaid by her the ſaid *Elizabeth* in manner and form aforeſaid above pleaded in reply, and the matter in the ſame contained, are good and ſufficient in law to compel him the ſaid *Thomas* to anſwer to the bill of her the ſaid *Elizabeth* aforeſaid; which ſaid plea, and the matter in the ſame contained, ſhe the ſaid *Elizabeth* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *Thomas* to that plea hath not anſwered, nor the ſame hath hitherto in any manner denied, ſhe the ſaid *Elizabeth* prays judgment, and that the ſaid *Thomas* may anſwer over to the bill of her the ſaid *Elizabeth*, or for want thereof, that her damages, by occaſion of the premiſſes, may be adjudged to her, *&c.* But becauſe the court of the ſaid lady the queen now here is not yet adviſed to give their judgment of and concerning the premiſſes, day thereupon is given to the parties aforeſaid before the lady the queen at *Weſtminſter*, until ——— next after ——— to hear their judgment of and concerning the premiſſes, for that the court of the ſaid lady the queen now here are not yet thereof, *&c.*

Pleas before our Lady the Queen at Weſtminſter *of the Term of the Holy* Trinity *in the fourth Year of the Reign of the Lady* Ann, *Queen of* England, &c.

The Queen *againſt* Highmore. 2 Ld. Raym. 1220.

Conviction for a cheat in the meaſure of coals.

London, (to wit) THE lady the queen hath ſent to *Owen Buckingham*, knt. mayor of the city of *London*, and *Richard Levett*, knt. two of the keepers of her peace and her juſtices, aſſigned to keep the peace in the city aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſame city, her writ cloſe in theſe words, *ſſ. Ann*, by the grace

grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. To *Owen Buckingham*, knt. mayor of the city of *London*, and *Richard Levett*, knt. two of the keepers of our peace and our justices, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within our city of *London*, and to every of them, greeting: we willing for certain causes, that all and singular records of conviction of whatsoever trespasses and contempts against the form of the statute, intitled, An act for regulating the measures and prices of coals set forth, whereupon *Edward Highmore* is convicted (as it is said) be sent by you before us, command you, that you send, or one of you send, all and singular the records of conviction aforesaid, with all things touching them, by whatsoever name the said *Edward Highmore* may be named in the same, before us, under your seals, or the seal of one of you, from the day of the Holy *Trinity* in three weeks, wheresoever we shall then be in *England*, together with this writ, that we may further do thereupon, that which of right and according to the law and custom of our realm of *England* we shall see to be done. Witness *J. Holt*, knt. at *Westminster* the 8th day of *June* in the 4th year of our reign. At which said three weeks of the Holy *Trinity*, before the said lady the queen at *Westminster*, *Owen Buckingham*, knt. mayor of the city of *London*, and *Richard Levett*, knt. two of the justices of the peace in the said writ named, returned the writ aforesaid, and sent the record in the same writ mentioned, in these words:

Certiorari to remove the conviction to *B R.*

London, (to wit) BE it remembered, that on the 16th day of *May* in the 4th year of the reign of our lady *Ann*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. one *Margaret Walker* of the parish of Saint *Faith the Virgin* in the ward of *Baynard's Castle* within the city of *London* aforesaid, widow, at the parish and ward aforesaid, came before us *Owen Buckingham*, knt. mayor of the city of *London* aforesaid, and *Richard Levett*, knt. one of the aldermen of the city aforesaid, then being two justices of the said lady the now queen, assigned to keep the peace for the city aforesaid, and then and there the said *Margaret* complained and informed us the said justices, that one *Edward Highmore* of the parish of Saint *Peter Paul's Wharfe* in the ward of *Queenhithe*, *London*, woodmonger, on the seventh day of *July* last past * exposed to sale, and actually sold and delivered to the aforesaid *Margaret Walker* a certain

To have made the conviction good these words ought to have been inserted, * "*At* London *aforesaid in the parish and ward aforesaid.*"

quantity of sea-coals, (imported into the river of *Thames*) for so much as, and instead of seven chaldrons of sea-coals, at the rate or price of thirty-four shillings, to be paid for every chaldron thereof; and that for, and instead of the full and due quantity and measure of seven chaldrons (of which every chaldron ought to contain thirty-six bushels heaped up, according to the bushel for that purpose sealed, kept at *Guihald* in *London*) the said quantity of coals so sold and delivered as aforesaid, fell short and wanted twenty-six bushels of the full and due measure of seven chaldrons, computing thirty and six bushels heaped up, according to the bushel for that purpose sealed, kept at *Guihald*, *London*, aforesaid, against the form and effect of the statute in that case lately made and provided; upon which said complaint and information of the said *Margaret Walker*, we the said *Owen Buckingham*, mayor of the city aforesaid, and *Richard Levett*, one of the aldermen of the same city, and then two justices of the said lady the now queen, assigned to keep the peace for and within the city aforesaid, on the said 16th day of *May* in the abovesaid fourth year of the reign of the said lady the now queen, at the parish and ward aforesaid, the said *Margaret* and *Edward* being convened and called before us, and having heard and examined the complaint aforesaid, in the presence of him the said *Edward Highmore*, by and upon the several oaths of *Ralph Walker*, *Richard Newman*, *Robert Hayes*, *Thomas Dunce*, *Joseph Vickers* and *Francis Griffin*, sufficient and credible witnesses, before us the said justices, for that cause then and there sworn upon the holy evangelists of God, it is manifestly proved to us the said justices, that the said quantity of sea-coals so as aforesaid sold and delivered to the said *Margaret Walker* by the said *Edward Highmore*, at the time of the sale and delivery thereof did fall short and wanted twenty-six bushels of seven chaldrons of thirty and six bushels heaped up, according to the bushel for that purpose sealed, kept at *Guihald*, *London*, aforesaid, to be computed, to make up every chaldron: and having fully heard and considered the allegations of the said *Edward Highmore* to the matter of the said complaint; therefore we the said justices adjudge him the said *Edward Highmore* guilty of the sale and delivery of six chaldrons and ten bushels of sea-coals to the said *Margaret Walker*, for and instead of seven chaldrons of such coals *, against the form and effect of the statute aforesaid. And we the said justices do further adjudge, that the said *Edward Highmore*, by occasion of the premisses,

* "To wit, at *London* aforesaid in the parish and ward aforesaid."

misses, doth forfeit the said quaintity of sea-coals by him so as aforesaid sold and delivered, and also the sum of twenty and one pounds six shillings and ten pence and a halfpenny, being the double value thereof, and that one moiety of the coals and money so as aforesaid forfeited, shall be paid and delivered to the said *Margaret Walker*, the party prosecuting in this behalf; and the other moiety thereof shall be delivered to the overseers of the poor of the said parish of *Saint Faith the Virgin*, now united to the parish of *Saint Augustine*, *London*, to the use of the poor of the parish. Given under our hands and seals at *London* the day and year first abovesaid.

N. B. This conviction was quashed, because it doth not shew that the coals were sold in the city of *London*, or within the liberties thereof. See the report.

Pleas at Westminster *before our Lady the Queen of the Term of the Holy* Trinity *in the fourth Year of the Reign of Lady* Ann, *Queen of* England, &c.

The Queen *against* Atkinson and another. 2 Ld. Raym. 1248.

Indictment against the collectors of a tax for falsly extorting money under colour of their office.

Borough of *Leeds*, (to wit) HEretofore, that is to say, on the 10th day of *January* in the 3d year of the reign of our lady *Ann*, by the grace of God, queen of *England*, &c. at the general quarter-session of the peace of the lady the queen, holden at *Leeds* for the borough aforesaid, before *Edmund Barker*, esq; mayor, *Jasper Blythman*, esq; recorder, *Thomas Dixon*, *William Rooke* and others their fellows, aldermen and justices of the said lady the queen, assigned to keep the peace within the borough aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed and done in the same borough; and from thence continued and holden by adjournment at *Leeds* aforesaid for the borough aforesaid, on the 14th day of *February* in the year abovesaid, before the said *Edmund Barker*,

Barker, mayor, *John Blythman*, recorder, and *William Rooke*, and before *Thomas Kitchingman*, *John Dodgson* and others their fellows, justices of the said lady the queen as aforesaid, assigned to keep the peace within the borough aforesaid, by the oath of twelve jurors, of good and lawful men of the borough aforesaid, impanelled, sworn and charged to inquire for the said lady the queen, for the body of the borough aforesaid, it was presented, that whereas on the 24th day of *March* in the 2d year of the reign of our lady *Ann*, by the grace of God, now queen of *England*, &c. *John Atkinson* late of *Leeds* in the borough aforesaid, linen draper, and *William Barstow*, late of *Leeds* aforesaid in the borough aforesaid grocer, then being collectors of several sums assessed upon the inhabitants of a certain liberty, called *Leeds Upper Division* within the borough aforesaid, mentioned and expressed in a certain assessment made and confirmed in pursuance of a certain act of parliament made in the first year of the reign of our said lady the now queen of *England*, &c. intitled, An act for granting an aid to her majesty by divers subsidies and a land-tax, the said *John Atkinson* and *William Barstow* on the said 24th day of *March* in the abovesaid 2d year of the reign of the said lady the now queen at *Leeds* aforesaid in the borough aforesaid, by colour of the office aforesaid, unlawfully, extorsively and deceitfully, and of their own wrong, exacted, received and had of one *Thomas Calverly*, then of *Leeds* aforesaid, in the borough aforesaid (being not assessed at all by virtue of the act of parliament aforesaid) the sum of four shillings, and that the said *John Atkinson* and *William Barstow* the same sum of four shillings so as aforesaid of the said *Thomas Calverly* unlawfully, extorsively and deceitfully exacted, received and had, and to the proper use of them the said *John Atkinson* and *William Barstow* then and there unlawfully, injuriously and deceitfully converted, to the great damage of him the said *Thomas Calverly*, to the evil example of all other delinquents in such case, and against the peace of the said lady the now queen, her crown and dignity; which said indictment the said lady the now queen afterward, for certain causes made to come to be determined before her, by which the sheriff of the county of *York* is commanded, that he do not omit, &c. but that he cause them to come to answer, &c. And now, to wit, on *Friday* next after the morrow of the Holy *Trinity* in this same term, before the lady the queen at *Westminster*, come the said *John Atkinson* and *William Barstow* by *Francis Pember* their attorney, and having severally heard the indictment aforesaid say, that they do not apprehend

that

that the said lady the now queen will or ought any further to impeach or trouble them the said *John* and *William* for the premisses, because they say that the said indictment, and the matter in the same contained, are not sufficient in law, to which they have no necessity, neither are they bound by the law of the land in any manner to answer, and for the insufficiency thereof pray judgment, and that they may be dismissed of the premisses by the court here, *&c.* And *Simon Harcourt*, esq; coroner and attorney of the said lady the queen, in the court of the said queen, before the queen herself, who prosecutes for the said lady the queen in this behalf, saith, that the indictment aforesaid, and the matter in the same contained, are good and sufficient in law to compel the said *John Atkinson* and *William Barstow* to answer to the same indictment; which said indictment, and the matter in the same contained, the said coroner and attorney of the said lady the queen for the said lady the queen is ready to verify and prove, as the court, *&c.* Wherefore since the said *John Atkinson* and *William Barstow* have not answered to the said indictment, nor deny the matter in the same contained, the said coroner and attorney of the said lady the queen, for the said lady the queen, prays judgment, and that the said *John Atkinson* and *William Barstow* may be convicted of the premisses in the said indictment above laid to their charge, *&c.*

Demurrer.

Joinder.

Pleas before the Lady the Queen at Westminster *of the Term of Saint* Michael *in the eleventh Year of the Reign of our Lady* Ann, *Queen of* Great Britain, &c. Roll 224.

Smith *against* Boheme and others. 2 Ld. Raym. 1396. cited.

THE lady the queen hath sent to her right trusty and well beloved *Thomas* lord *Trevor*, her chief justice of the bench, her writ-close in these words: *Ann*, by the grace of God, of *Great Britain*, *France* and *Ireland* queen, defender of the faith, *&c.* To her right trusty and well-beloved *Thomas* lord *Trevor*, her chief justice of the bench, greeting: Forasmuch as in the record and process,

Action on the case on a special promise.

procefs, and alfo in giving of judgment in a plaint which was in our court before you and your companions, our juftices of the bench aforefaid, by our writ, between *Caleb Smith* and *Samuel Boheme* late of *London*, gent. and *Maurice Boheme* late of *London*, diftiller, of a certain trefpafs upon the cafe, done to the faid *Caleb* by the faid *Samuel* and *Maurice*, as it is faid, manifeft error hath intervened, to the great damage of the faid *Samuel* and *Maurice*, as by their complaint we are informed: we willing that the faid error, if any be, be duly amended, and full and fpeedy juftice done to the faid parties in this behalf, do command you, that if judgment be given thereupon, then you fend to us diftinctly and plainly under your feal the record and procefs aforefaid, with all things touching the fame, and this writ, fo that we may have them on the octave of the Holy *Trinity*, wherefoever we fhall then be in *England*, that infpecting the record and procefs aforefaid, we may caufe further to be done thereupon for amending the faid error, as of right and according to the law and cuftom of *England* fhall be meet to be done. Witnefs ourfelf at *Weftminfter* the fourth day of *June* in the eleventh year of our reign.

Layton.

Which faid writ is thus returned: the anfwer of *Thomas* lord *Trevor*, the chief juftice within named.

The record and procefs of the plaint, whereof mention is within made, with all things touching the fame, I fend before the lady the queen wherefoever, &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

Trevor.

Pleas inrolled at Westminster *before* Thomas *Lord* Trevor, *Baron of* Bromham, *and his Companions, Justices of the Lady the Queen of the Bench of the Term of Saint* Hilary *in the tenth Year of the Reign of the Lady* Ann, *by the Grace of God, of* Great Britain, &c. *Queen, Defender of the Faith,* &c. Roll 400.

London, (to wit) SAMUEL *Boheme* late of *London,* gent. and *Maurice Boheme* late of *London,* silversmith, were attached to answer *Caleb Smith* of a plea of trespass upon the case, &c. And whereupon the said *Caleb* by *Richard Humfreys* his attorney complains, that whereas one *Samuel Boheme* the younger on the tenth day of *August* in the year of our Lord 1711, at *London,* to wit, in the parish of *Saint Mildred the Virgin* in the *Poultry* in the ward of *Cheape* was indebted to the said *Caleb* in seventy-one pounds twelve shillings and ten pence, for divers goods, wares and merchandizes to the said *Samuel Boheme* the younger before that time by the said *Caleb* sold and delivered; and the said *Samuel Boheme* the younger being so indebted to the said *Caleb,* he the said *Caleb,* for the better and speedier obtaining and recovery of that debt afterward, to wit, on the 26th day of *September* in the year abovesaid, the said *Caleb* levied his certain plaint against the said *Samuel Boheme* the younger, by the name of *Samuel Boheame,* in the court of the lady the now queen of record, holden before *George Thorold,* knight and baronet, one of the late sheriffs of the city of *London,* in his counter in the *Poultry,* in the parish and ward aforesaid, in a plea of trespass upon the case, to the damage of him the said *Caleb* of one hundred and fifty pounds, according to the custom of the city of *London* aforesaid, and then and there, according to the custom of that city, at the petition of him the said *Caleb,* by the said court it was by word of mouth commanded to *John Russell,* one of the serjeants at mace of the said late sheriff, and a minister of the court aforesaid, that he, according to the custom of the court aforesaid, should take and arrest the said *Samuel Boheme* the younger, by the name of *Samuel Boheame,* by his body, and keep him safely, so that he might have his body at the said court of the said lady the queen, to wit, on the 27th day of the same month of *September* in the year abovesaid, before the said late sheriff, holden in his counter aforesaid, to answer the said

Action upon a special promise to pay plaintiff a sum of money, or to render the body of *S. B.* to prison.

That one *S. B.* was indebted to plaintiff in 71*l.* 12*s.* 10*d.*

for which he arrested him in the sheriffs court of *London.*

ſaid *Caleb* in the plea of his plaint aforeſaid, according to the cuſtom of the city aforeſaid: by virtue of which ſaid precept, and before the ſaid 27th day of *September* in the year aboveſaid, the ſaid *John Ruſſell*, the ſaid ſerjeant at mace of the ſaid late ſheriff, took and arreſted the ſaid *Samuel Boheme* the younger, by the name of *Samuel Boheame*, by his body, and had him the ſaid *Samuel Boheme* in his cuſtody for the cauſe aforeſaid; and the ſaid *Samuel Boheme* being ſo arreſted and in cuſtody, they the ſaid *Samuel Boheme* the now defendant, and *Maurice*, had notice thereof; and afterwards, to wit, on the 26th day of *September* in the year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, they the ſaid *Samuel Boheme* the now defendant, and *Maurice Boheme*, in conſideration that the ſaid *Caleb*, at the ſpecial inſtance and requeſt of the ſaid *Samuel* the now defendant, and *Maurice*, would diſcharge the ſaid *Samuel Boheme* the younger, by the name of *Samuel Boheame*, out of the cuſtody of the ſaid *John Ruſſell*, the ſaid ſerjeant at mace of the ſaid ſheriff, aſſumed upon themſelves, and to the ſaid *Caleb* then and there jointly and ſeverally faithfully promiſed to pay to the ſaid *Caleb Smith*, or to his order upon demand, 71 *l.* 12 *s.* 10 *d.* for value received, or ſurrender the body of him the ſaid *Samuel Boheme* the younger to the cuſtody of the ſaid *John Ruſſell*, ſerjeant at mace of the ſaid late ſheriff, to the action ſo brought by the ſaid *Caleb Smith* againſt him. And the ſaid *Caleb* in fact ſaith, that he the ſaid *Caleb* giving credit to the ſaid promiſes and undertakings of the ſaid *Samuel* the now defendant, and *Maurice*, at the aforeſaid inſtance and requeſt of them the ſaid *Samuel* the now defendant, and *Maurice*, did then and there diſcharge the ſaid body of him the ſaid *Samuel Boheme* the younger, by the name of *Samuel Boheame*, out of the cuſtody of the ſaid *John Ruſſell*, ſerjeant at mace aforeſaid. And afterward, to wit, the ſame day and year laſt aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, gave notice thereof to the ſaid *Samuel* the now defendant, and to the ſaid *Maurice*: nevertheleſs the ſaid *Samuel* the now defendant, and *Maurice*, not at all regarding their ſaid promiſes and undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive the ſaid *Caleb* in this behalf, have not paid, nor hath ether of them paid to the ſaid *Caleb* the ſaid 71 *l.* 12 *s.* 10 *d.* nor have they ſurrendered the body of the ſaid *Samuel Boheme* the younger to the cuſtody of the ſaid ſheriff, or of his ſerjeant at mace aforeſaid, in the action aforeſaid, as according to their promiſes and undertakings aforeſaid, they the ſaid *Samuel* the now defendant, and *Maurice*,

And *S. B.* being in cuſtody of the ſerjeant at mace, the defendants, in conſideration that plaintiff would diſcharge him, promiſed to pay the money, or render his body to the ſerjeant at mace.

Breach.

rice, ought to have done, although by the said *Caleb* afterward, to wit, on the said 27th day of *September* in the year abovesaid, they were requested. And also whereas the said *Samuel Boheme* the now defendant, and *Maurice*, after the first day of *May* in the year of our Lord 1705, to wit, on the 26th day of *September* in the year of our Lord 1711, at *London* aforesaid in the parish and ward aforesaid, made their certain note in writing, commonly called a promissory note, with their own proper hands subscribed thereunto, bearing date the day and year last abovesaid; by which said note they the said *Samuel* the now defendant, and *Maurice*, jointly and severally promised to pay to the said *Caleb Smith*, or order, upon demand, 71 *l.* 12 *s.* 10 *d.* for value received, or surrender the body of him the said *Samuel Boheme* the younger to the action brought by the said *Caleb Smith* against him; and they the said *Samuel Boheme* the now defendant, and *Maurice*, have not surrendered the body of the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, according to the tenor of the said note: and by reason of the premisses, and also by force of the statute in such case lately made and provided, they the said *Samuel Boheme* the now defendant, and *Maurice*, became jointly and severally liable to pay to the said *Caleb* the said sum of money, according to the tenor of the note aforesaid; and in consideration thereof they the said *Samuel Boheme* the now defendant, and *Maurice*, afterward, to wit, the first day of *October* in the year last abovesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon themselves, and to the said *Caleb Smith* then and there jointly and severally faithfully promised to pay to the said *Caleb Smith* the said 71 *l.* 12 *s.* 10 *d.* according to the tenor of the said note: nevertheless the said *Samuel* the now defendant, and *Maurice*, their promises and undertakings last mentioned not at all regarding, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Caleb* in this behalf, the sum of money last mentioned, or any part thereof, to the said *Caleb* have not yet paid, nor hath either of them paid, nor have they surrendered, nor hath either of them surendered the body of him the said *Samuel Boheme* the younger, by the name of *Samuel Boheame*, to the action last mentioned, but they have wholly refused, and yet do refuse, to perform the promises last mentioned in any manner. And also whereas the said *Samuel Boheme* the now defendant, and *Maurice*, after the first day of *May* in the year of our Lord 1705, to wit, on the 26th day of *September* in the year of our Lord 1711, at *London* aforesaid in the parish and ward aforesaid, made their certain note in writing, commonly called a promissory note, their

Another count on the note.

Second count upon a note in writing upon the statute.

their own proper hands being ſubſcribed thereunto, bearing date the day and year laſt above mentioned, by which ſaid note they the ſaid *Samuel* the now defendant, and *Maurice*, jointly and ſeverally promiſed to pay to the ſaid *Caleb Smith*, or order, upon demand, 71 *l.* 12 *s.* 10 *d.* for value received; and by reaſon thereof, and alſo by force of the ſtatute in ſuch caſe lately made and provided, they the ſaid *Samuel Boheme* the now defendant, and *Maurice*, become jointly and ſeverally liable to pay to the ſaid *Caleb* the ſame ſum of money, according to the tenor of the ſaid note; and in conſideration thereof they the ſaid *Samuel Boheme* the now defendant, and *Maurice*, afterward, to wit, on the 2d day of *October* in the year laſt abovesaid, at *London* aforeſaid in the pariſh and ward aforeſaid, aſſumed upon themſelves, and to the ſaid *Caleb*, then and there jointly and ſeverally faithfully promiſed to pay to the ſaid *Caleb* the ſaid 71 *l.* 12 *s.* 10 *d.* upon demand: nevertheleſs the ſaid *Samuel Boheme* the now defendant, and *Maurice*, not at all regarding their promiſes laſt mentioned ſo as aforeſaid to the ſaid *Caleb* in form aforeſaid made, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Caleb* in this behalf, the ſaid laſt ſum of money, or any part thereof, to the ſaid *Caleb* have not yet paid, nor hath either of them paid, or in any manner contented him for the ſame, (although to do this the ſaid *Samuel* the now defendant, and *Maurice*, afterwards, to wit, on the 3d day of *October* in the year laſt aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, by the ſaid *Caleb* have been requeſted) but to pay the ſame to him they have wholly refuſed, and yet do refuſe, to the damage of him the ſaid *Caleb* of eighty pounds; and thereupon he brings his ſuit, &c.

General iſſue.

And the ſaid *Samuel* and *Maurice* by *Edward Gilbert* their attorney come and defend the force and injury when, &c. and ſay, that they did not aſſume upon themſelves in manner and form as the ſaid *Caleb* above complains againſt them; and of this they put themſelves upon the country; and the ſaid *Caleb* likewiſe: therefore the ſheriff is commanded, that he cauſe to come here on the octave of the purification of the bleſſed *Mary* twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. At which day the jury between the parties aforeſaid of the plea aforeſaid was reſpited between them here until this day, to wit, from *Eaſter* day in fifteen days then next following, unleſs *Thomas* lord *Trevor*, baron of *Bromham*, chief juſtice of the lady the queen

Niſi prius.

queen of the bench here, aſſigned by form of the ſtatute, *&c.* on *Thurſday* the 14th day of *February* next, paſt, at *Guibald*, *London*, ſhould firſt come. And now here at this day cometh the ſaid *Caleb* by his attorney aforeſaid; and the ſaid chief juſtice, before whom, *&c.* hath ſent his record in theſe words: Afterwards at the day and place within contained, before *Thomas* lord *Trevor*, baron of *Bromham*, the chief juſtice within written, (*Joſeph Houlton*, gent. being aſſociated unto him by form of the ſtatute, *&c.*) came the within named *Caleb Smith* by his attorney within contained, and the within named *Samuel Boheme* and *Maurice Boheme*, although ſolemnly called came not, but made default; therefore the jury within written was taken againſt them by default: and the jurors of the jury being called, certain of them, to wit, *Lancelot Skinner*, *Edward Bull*, *John Clement*, *Nicholas Jarvis* and *Thomas Boucher* came and are ſworn upon that jury: and becauſe the reſt of the jurors of the ſame jury did not appear, therefore others of the byſtanders by the ſheriffs of *London* to this being choſen, at the requeſt of the ſaid *Caleb Smith*, and by the command of the chief juſtice aforeſaid are newly appointed, whoſe names are affiled in the panel within written, according to the form of the ſtatute in ſuch caſe made and provided, which ſaid jurors ſo newly appointed, to wit, *Edward Skinner*, *John Meredith*, *Jonathan Kendall*, *Francis Ludlam*, *Benjamin Ruſſell*, *Downes Ward* and *John Crompton* being called likewiſe come, who being choſen, tried and ſworn to ſpeak the truth of the premiſſes within contained, together with the other jurors aforeſaid before impanelled and ſworn, as to the firſt and ſecond promiſes and undertakings in the declaration within written within mentioned, ſay upon their oath, that the ſaid *Samuel Boheme* and *Maurice Boheme* aſſumed upon themſelves in manner and form as the ſaid *Caleb Smith* within againſt them complains: and they aſſeſs the damages of him the ſaid *Caleb*, by occaſion of the non-performance of the promiſes and undertakings aforeſaid within written, beſides his coſts and charges by him laid out about his ſuit in this behalf to 61*l.* 12*s.* 10*d.* and for thoſe coſts and charges to fifty-three ſhillings and four-pence; and as to the reſt of the promiſes and undertakings in the declaration aforeſaid mentioned, the jurors aforeſaid upon their ſaid oath ſay, that the ſaid *Samuel Boheme* and *Maurice Boheme* did not aſſume upon themſelves in manner and form as they the ſaid *Samuel* and *Maurice* have within by pleading alledged for themſelves; therefore it is conſidered, that the ſaid *Caleb* do recover againſt the ſaid *Samuel* and *Maurice* his

Poſtea.

Tales.

Verdict for plaintiff as to part.

For the defendant as to part.

Judgment for plaintiff as to part.

Defendant in mercy.

his damages aforesaid to 64*l.* 6*s.* 2*d.* by the jurors aforesaid in form aforesaid assessed, and also 21*l.* 13*s.* 10*d.* to the said *Caleb*, at his request, for his costs and charges aforesaid by the court here by way of increase adjudged; which said damages amount in the whole to 86*l.* and the said *Samuel* and *Maurice* thereof in mercy, &c. And the said *Caleb* likewise in mercy for his false claim against the said *Samuel* and *Maurice* as to the rest of the promises and undertakings aforesaid in the declaration aforesaid likewise mentioned, whereof they the said *Samuel* and *Maurice* by the jurors aforesaid are above acquitted; and the said *Samuel* and *Maurice* may go thereof without day, &c.

For the defendant as to part. Plaintiff in mercy.

Common errors assigned, That the declaration is insufficient, and that the judgment is for the plaintiff where it ought to be for defendant. No original, *in nullo est erratum* pleaded.

Pleas before the Lord and Lady the King and Queen at Westminster *of the Term of the Holy* Trinity *in the sixth Year of the Reign of* William *and* Mary, *King and Queen of* England, &c.

Wilson *against* Law. 1 Ld. Raym. 20.

Appeal of murder.

Middlesex, (to wit) JOHN *Law* late of the parish of *Saint Giles in the Fields* in the county aforesaid, gent. was attached by his body to answer to *Robert Wilson*, gent. the brother and heir of *Edward Wilson*, gent. concerning the death of the aforesaid *Edward*, formerly his brother, whereof he appealeth him; and there are pledges of prosecuting, that is to say, *Charles Williams* of the parish of Saint *James* within the liberty of *Westminster* in the county aforesaid, tapestry-maker, and *John Wheeler* of the parish of Saint *Mary le Savoy* in the county aforesaid, gent. And whereupon the said *Robert Wilson*, the brother and heir of the said *Edward Wilson*, in his proper person instantly appealeth the said *John Law* of it *; that when the aforesaid *Edward Wilson* was in the peace of God and of the lord the now king and of the lady the now queen, at the aforesaid parish of Saint *Giles in the Fields* in the said county of *Middlesex*, on the ninth day of *April* in the sixth year of the reign of the lord *William* and lady *Mary*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king and queen, defenders of the faith, &c. about the first hour after mid-day of the same day came the

(* Of it) *i. e.*, of the death of his brother.

the aforesaid *John Law* feloniously and as a felon, of the said lord the now king and lady the now queen, lying in wait, and of his malice aforethought, and assault premeditated, against the peace of the said lord the now king and lady the now queen, their crown and dignity, and in the same day, year, hour and place, with force and arms, &c. feloniously, wilfully, and of his malice aforethought made an assault upon him the said *Edward Wilson*; and the said *John Law* then and there with a certain sword made of iron and steel of the value of five shillings, which he the said *John Law* in his right hand then and there drew, had and held, then and there violently, feloniously, wilfully, and of his malice aforethought, did strike, stab and thrust in, and upon the upper part of the belly of him the said *Edward Wilson*, near the breast and middle of the body of him the said *Edward*, giving to the same *Edward Wilson* then and there with the sword aforesaid, in and upon the aforesaid upper part of the belly of him the aforesaid *Edward Wilson*, near his breast and middle of his body, one mortal wound of the breadth of two inches and of the depth of five inches, of which mortal wound indeed the said *Edward Wilson* then and there instantly died; and so the aforesaid *John Law* then and there, that is to say, on the said ninth day of *April* in the sixth year abovesaid, about the first hour after mid-day of the same day, at the aforesaid parish of *Saint Giles in the Fields* in the county of *Middlesex* aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought hath slain, killed and murdered the aforesaid *Edward Wilson*, against the peace of the said lord the now king and lady the now queen, their crown and dignity; and as soon as the same felon, the said *John Law*, had done the felony and murder aforesaid, he the same *John Law* fled, and the aforesaid *Robert Wilson*, him the said *John Law* freshly pursued from vill to vill unto the four nearest vills, and further until, &c. And if the said felon will deny the felony and murder aforesaid laid to him in form aforesaid, the said *Robert Wilson* is ready to prove this against him, as the court, &c.

Defendant craves *Oyer* of the writ and the return.

And the aforesaid *John Law* in his proper person comes and prays *Oyer* of the writ of appeal aforesaid, and the return of the same writ; and they are read to him in these words, (to wit) *William* and *Mary*, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king and queen, defenders of the faith, &c. To the sheriff of *Middlesex*, greeting: forasmuch as *Robert Wilson*, gent. the brother and heir of

The writ of appeal.

of *Edward Wilson*, gent. hath made you secure of prosecuting his clamour by *Charles Williams* of the parish of Saint *James* within the liberty of *Westminster* in your county, tapestry-maker, and *John Wheeler* of the parish of *Saint Mary le Savoy* in your county, gent. Therefore we command you, that you attach *John Law* late of the parish of *Saint Giles in the Fields* in your county, gent. by his body, according to the law and custom of our kingdom of *England*, so that you may have him before us from the day of *Easter* in one month wheresoever we shall then be in *England*, to answer to the aforesaid *Robert Wilson* concerning the death of the said *Edward Wilson*, formerly his brother, whereof he appealeth him; and have you then there this writ. Witness ourselves at *Westminster* the 19th day of *April* in the sixth year of our reign. *Martin.* By virtue of this writ to me directed, I have caused to be attached the within named *John Law* by his body, whose body indeed I have ready before the lord the king and lady the queen, wheresoever, &c. as it is within commanded to me. The answer of *Thomas Abney*, knt. and *William Hedges*, knt. sheriff; which being read and heard, the aforesaid *John Law* defends the force and injury when, &c. and all the felony, and whatsoever, &c. and prays judgment of the original writ and declaration aforesaid, because he saith that that writ, and the return thereof, and also the declaration aforesaid thereupon, are not sufficient in law to compel him the said *John Law* to answer thereunto; and that he to the writ aforesaid as aforesaid returned, or to the declaration aforesaid as aforesaid declared, hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify; wherefore he prays judgment of the writ and return, and of the declaration aforesaid, and that the said writ may be quashed, &c. And as to the felony and murder aforesaid, he the said *John Law* saith that he is not guilty thereof, and of good and evil he puts himself upon the country, and the aforesaid *Robert Wilson* likewise, &c.

The return.

Demurrer to the writ and count.

Not guilty to the murder.

Issue.

Joinder in demurrer as to the writ and return.

And the aforesaid *Robert Wilson*, as to the aforesaid plea of the said *John Law* above to the writ of him the said *Robert Wilson* aforesaid in form aforesaid pleaded, saith, that the said writ, and the return thereof, and the matter in the same contained, are good and sufficient in law to compel the said *John Law* to answer thereunto; and this he is ready to verify: wherefore since the said *John Law* hath nothing alledged or assigned in which the said writ, or the return thereof, is bad, vicious or defective, he the said *Robert Wilson* prays judgment, and that the same writ, and the said return thereof, may be adjudged good and sufficient

ſufficient in law, &c. And as to the ſaid demurrer in law, or the plea of the aforeſaid *John Law* to the declaration of the ſaid *Robert Wilſon* aforeſaid above in form aforeſaid pleaded, he the ſaid *Robert Wilſon* ſaith, that the ſaid declaration, and the matter in the ſame contained ſo as aforeſaid declared, are good and ſufficient in law, as well to have and maintain in his appeal aforeſaid againſt the ſaid *John Law*, as to compel the ſame *John Law* to anſwer thereunto; which declaration indeed, and the matter in the ſame contained, he the ſaid *Robert Wilſon* is ready to verify and prove, as the court, &c. And becauſe the ſaid *John Law* doth not anſwer to that plea, nor hath hitherto in any manner denied it, he the ſaid *Robert Wilſon* prays judgment, and that the ſaid *John Law* may be convicted of the felony and murder aforeſaid, &c.

Joinder in demurrer as to the declaration.

Hartop *againſt* Holt. 1 Ld. Raym. 97.

WILLIAM the third, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To our right truſty and well-beloved Sir *John Holt*, knt. our chief juſtice, aſſigned to hold pleas in our court before us, greeting: whereas in the ſtatute ſet forth in the parliament of lady *Elizabeth*, late queen of *England*, holden at *Weſtminſter* the twenty-third day of *November* in the 27th year of her reign, it was enacted by the authority of the ſame parliament, that where any judgment ſhould at any time thereafter be given in the court of king's-bench in any ſuit or action of debt, detinue, covenant, account, action upon the caſe, *ejectione firmæ*, or treſpaſs, firſt commenced, or to be firſt commenced there, (other than ſuch only where the queen's majeſty ſhould be party) the party, plaintiff or defendant againſt whom ſuch judgment ſhould be given, might at his election ſue forth out of the court of chancery a ſpecial writ of error, to be deviſed in the ſaid court of chancery, directed to the chief juſtice of the ſaid court of the king's-bench for the time being, commanding him to cauſe the ſaid record, and all things concerning the ſaid judgment, to be brought before the juſtices of the common bench and the barons of the exchequer into the exchequer chamber, there to be examined by the ſaid juſtices of the common bench and barons aforeſaid; which ſaid juſtices of the common bench, and ſuch barons of the exchequer as are of the degree of the coif, or ſix of them at the leaſt, by virtue of that ſtatute ſhould thereupon have full power and authority to

A writ of error in the exchequer chamber, as well on the judgment as in the awarding execution.

examine all ſuch errors as ſhould be aſſigned or found in or upon any ſuch judgment, and thereupon to reverſe or affirm the ſaid judgment, as the law ſhould require, other than for errors to be aſſigned or found for or concerning the juriſdiction of the ſaid court of king's bench, or for any want of form in any writ, return, plaint, bill, declaration, or other pleading, proceſs, verdict or proceeding whatſoever; and after that the judgment ſhould be affirmed or reverſed, the record, and all things concerning the ſame, ſhould be brought back into the ſaid court of king's bench, that ſuch further proceeding ſhould be had thereupon, as well for execution as otherwiſe ſhould appertain, as in the ſaid ſtatute, among other things, more fully appears: and foraſmuch as in the record and judgment, and alſo in the giving of judgment in a plaint which was in our court before us by bill, between *Thomas Hartop* and *Richard Holt*, otherwiſe called *Richard Holt of London*, mercer, as well of a debt of 335 *l.* which the ſaid *Thomas* demanded of the ſaid *Richard*, as of 43 *s.* for his damages which he ſuſtained by occaſion of the detaining of that debt, and alſo in the awarding of execution of the judgment aforeſaid, upon our writ of *ſcire facias* iſſuing out of our ſame court for the ſaid *Thomas* againſt the ſaid *Richard* of the debt and damages aforeſaid, manifeſt error hath intervened, as by the complaint of the ſaid *Richard* we are informed; which ſaid error in no manner concerneth us, or the juriſdiction of our ſaid court of king's bench, or the want of form in any writ, return, plaint, bill, declaration, or other pleading, proceſs, verdict or proceeding whatſoever, as we are informed: we willing that the ſaid error, if any be, be corrected, according to the form of the ſtatute aforeſaid, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given, and an award of execution of the ſame judgment upon our writ of *ſcire facias* be adjudged, that as well the record and proceedings aforeſaid, as all things concerning the ſame, before the ſaid juſtices of the common bench and barons of our exchequer aforeſaid, in the exchequer chamber aforeſaid, on *Saturday*, to wit, the 2d day of *May* next coming, you cauſe to be brought before our ſaid juſtices and barons, that they having examined the record and proceſs aforeſaid, may cauſe further to be done thereupon that which of right and according to the law and cuſtom of our kingdom of *England* ſhall be meet to be done. Witneſs ourſelf at *Weſtminſter* the 12th day of *February* in the 7th year of our reign.

Pleas before the Lord the King and Lady the Queen at Westminster *of the Term of Saint* Hilary *in the fourth and fifth Years of the Reign of the Lord* William *and Lady* Mary, *now King and Queen of* England, &c. Roll 272.

Walter *against* Rumball. 1 Ld. Raym. 53.

Southamptonshire, (to wit) BE it remembered, that heretofore, to wit, on *Saturday* next after eight days of Saint *Martin* in the term of Saint *Michael* in the 3d year of the reign of the lord *William* and lady *Mary*, now king and queen of *England*, &c. before the said lord the king and lady the queen at *Westminster* came *William Walter Clerk* by *Richard Hill* his attorney, and brought here into the court of the said lord the king and lady the queen then there his certain bill against *Edmund Rumball*, in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, (to wit) *Southamptonshire*, (to wit) *William Walter Clerk* complains of *Edmund Rumball*, in the custody of the marshal of the *Marshalsea* of the lord the king and lady the queen, being before the king and queen themselves, for that (to wit) that whereas the said *William* on the first day of *November* in the third year of the reign of the lord *William* and lady *Mary*, now king and queen of *England*, &c. at *Andover* in the county aforesaid, was possessed of the cattle, goods and chattels following, that is to say, of six swine, twelve pigs, three cows, two bullocks, four horses, one hundred and two sheep, of the price of 100 *l.* of lawful money of *England*, and of two stacks of hay, one stack of barley, one stack of peas and one stack of wheat, to the value of one hundred pounds of lawful money of *England*, as of his own proper cattle, goods and chattels; and being so possessed thereof, the said *William* afterwards, to wit, on the tenth day of *November* in the third year abovesaid, at *Andover* aforesaid in the said county, casually lost the cattle, goods and chattels aforesaid, out of his hands and possession; which said cattle, goods and chattels so lost, afterwards in the day, year, and at the place last abovesaid came to the hands and possession of him the said *Edmund*, by finding: nevertheless the said *Edmund* knowing the cattle, goods and chattels aforesaid to be the proper cattle, goods and

Trover for cattle, goods and chattels.

and chattels of him the said *William*, and to him the said *William* of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *William* in this behalf, hath not yet delivered the cattle, goods and chattels aforesaid to him the said *William*, (although often requested, &c.) but the said *Edmund* afterwards, to wit, on the twelfth day of *November* in the third year abovesaid, at *Andover* aforesaid, converted and disposed of the said cattle, goods and chattels to his own proper use and profit; whereupon the said *William* saith that he is injured, and hath damage to the value of 200 *l.* and thereupon he brings his suit, &c.

Imparlance.

And now at this day, to wit, *Monday* next after eight days of Saint *Hilary* in this same term, until which day the said *Edmund* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king and lady the queen at *Westminster* cometh as well the said *William* by his attorney aforesaid, as the said *Edmund* by *Henry Curle* his attorney: and the said *Edmund* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country; and the said *William* thereupon likewise, &c. Therefore let a jury thereof come before the lord the king and lady the queen at *Westminster* on *Monday* next after eight days of the purification of the blessed Virgin *Mary*, and who neither, &c. to take cognisance, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process between the parties aforesaid is thereupon continued of the plea aforesaid by respiting the jury thereof between them before the lord the king and lady the queen at *Westminster* until *Wednesday* next after fifteen days of *Easter* from thence next following, unless the justices of the lord the king and lady the queen, assigned to take the assises in the county aforesaid, shall before come on *Tuesday* the 11th day of *April* at the castle of *Winchester* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. At which day before the lord the king and lady the queen at *Westminster* come the parties aforesaid by their said attornies, and the said justices of the said lord the king and lady the queen, before whom, &c. sent here their record before them had in these words, (to wit) Afterwards on the day and at the place within contained, before *William Dolben*, knt. one of the justices of the lord the king and lady the queen, assigned to hold pleas before the king and queen themselves, and *John Powell*, knt. one of the justices of the said lord the king and lady the queen of the bench, justices of the said lord the king and lady the queen, assigned to take the assizes in the county

Not guilty pleaded.

Postea.

county of *Southampton*, by form of the ftatute, &c. comes the within named *William Walter Clerk* by his attorney within contained, and the within named *Edmund Rumball*, although folemnly called, did not come, but made default; therefore the jury whereof mention is within made, is taken againft him by default; and the jurors of that jury being called, fome of them, to wit, *John Hale*, *Francis Kent* (and eight others) came, and are fworn upon that jury: and becaufe the reft of the jurors of the fame jury did not appear, therefore others of the by-ftanders, by the fheriff of the county aforefaid, being chofen for this purpofe, at the requeft of him the faid *William Walter*, and by the command of the juftices aforefaid, are newly appointed, whofe names are affiled in the panel within written, according to the form of the ftatute in fuch cafe lately made and provided: and the jurors fo newly appointed, that is to fay, *Richard Hawes* and *Jofeph Watts* being called likewife come, who being chofen, tried and fworn to fpeak the truth concerning the matters within contained, together with the other jurors aforefaid, being impanelled and fworn to this purpofe, fay upon their oath that one *John Smith*, efq; on the 16th day of *October* in the 28th year of the reign of the lord *Charles* the fecond, late king of *England*, &c. was feifed in his demefne as of fee of and in one barn and 200 acres of land, with the appurtenances, lying and being in the foreft of *Chute*, one part thereof being within the hundred of *Kinnerfley* in the county of *Wilts*, and the other part thereof within the hundred of *Andover without* in the county of *Southampton*; and being fo feifed thereof, afterwards, to wit, on the 17th day of *October* in that fame year, by his certain indenture fealed with his feal, and to the jury now fhewn here in evidence, bearing date the fame 16th day of *October*, demifed the tenements aforefaid, with the appurtenances, to one *William Walter*, the father of the faid *William Walter* the now plaintiff, for the term of twenty-one years, from thence next following and fully to be compleat and ended; yielding and paying therefore during the fame term to the faid *John Smith*, his heirs and affigns, the yearly rent of 43*l.* and 10*s.* of lawful money of *England*, yearly and every year, at the feaft of the annunciation of the bleffed virgin *Mary* and Saint *Michael* the archangel, by equal portions; and that by virtue of the faid demife the faid *William Walter* the father afterwards, to wit, the fame day and year entered into the faid demifed premiffes, and was poffeffed thereof for and during the term aforefaid, the reverfion thereof to the faid *John Smith* then and yet belonging; and that 46*l.* and 8*d.* of the rent aforefaid, on the 21ft day of *October* in the year of our Lord 1691 were

Tales de circumftantibus.

Special verdict.

Seifin in fee.

and demifed by indenture.

Leffee entered, and was poffeffed.

Rent in arrear. And defendant, by order of the landlord's bailiff, (the landlord being beyond seas) distrained for the rent arrear upon the lands lett in 2 hundreds.

were in arrear and unpaid to the said *John Smith*, for which the said *Edmund Rumball* on the said 21st day of *October*, by the command and order of one *Henry Garnons*, then and continually afterwards until this time being the bailiff of the said *John Smith*, he the said *John Smith* being then and continually afterwards until this time in parts beyond the seas, distrained the cattle, goods and chattels within specified in the declaration within written, then being the cattle, goods and chattels of him the said *William Walter* the now plaintiff, being then levant and couchant upon the said demised premisses, that is to say, one part thereof upon that part of the said demised premisses which lies within the said hundred of *Kinnersley* in the county of *Wilts*, and the other part thereof upon the other part of the said demised premisses which lies within the said hundred of *Andover without* in the county of *Southampton*, for the rent aforesaid, so being in arrear; and the same day and year gave notice thereof, and of the cause of the said distress, to him the said *William*, according to the form of the statute in such case lately made and provided, intitled, an act for enabling the sale of goods distrained for rent, in case the rent be not paid in a reasonable time. And the said jurors upon their oath aforesaid further say, that at any time after the distress aforesaid, the said *William Walter* the now plaintiff hath not brought or prosecuted any writ to replevy the cattle, goods and chattels aforesaid, wherefore after five days had been elapsed and expired after the said notice to him the said *William*, and before the exhibiting the bill of him the said *William*, to wit, on the 2d day of *November* in the year of our Lord 1691 abovesaid, the said *Edmund Rumball*, together with the constable of the hundred of *Kinnersley* aforesaid for the time then being, caused the cattle, goods and chattels within mentioned in the declaration aforesaid within the hundred of *Kinnersley* aforesaid, to be appraised by two appraisers, sworn within that hundred to appraise the same truly according to the best of their understanding, by the constable of the same hundred of *Kinnersley* in the presence of the constable of the hundred of *Andover without* aforesaid: and that after the said appraisement of the cattle, goods and chattels aforesaid, and before the exhibiting the bill of him the said *William Walter*, the said *Edmund Rumball* sold a certain parcel of the cattle, goods and chattels aforesaid, to certain persons unknown to the jurors aforesaid. But the said jurors upon their said oath further say, that the said cattle, goods and chattels so sold, were not of the value of the rent aforesaid so being in arrear as aforesaid, nor were sold for the value of that rent so being in arrear. And the jurors aforesaid upon their said oath further

The act for distresses for rent.

No replevin sued out.

The 5 days expired.

The defendant with a constable caused the goods to be appraised,

and afterwards sold the goods.

The goods not of the value of the rent.

further ſay, that the cattle, goods and chattels aforeſaid, were appraiſed in manner aforeſaid, and not otherwiſe, or in any other manner: and that the ſaid *Edmund Rumball* took and carried away the reſt of the ſaid cattle, goods and chattels not ſold after the appraiſement aforeſaid, to be ſold when there ſhould be an opportunity, and yet detains in his cuſtody thoſe cattle, goods and chattels: but whether upon the whole matter aforeſaid, by the jurors aforeſaid in manner and form aforeſaid found, the ſaid *Edmund Rumball* be guilty of the premiſſes within laid to his charge by the ſaid declaration, the ſaid jurors are wholly ignorant, and pray thereupon the advice of the court of the lord the king and lady the queen now here: and if upon the ſaid matter it ſhall ſeem to the court here that the ſaid *Edmund Rumball* be guilty of the premiſſes within laid to his charge by the ſaid declaration, then the ſaid jurors ſay upon their oath, that the ſaid *Edmund Rumball* is guilty thereof, as the ſaid *William Walter* within thereof complains againſt him; and then they aſſeſs the damages of him the ſaid *William Walter*, by occaſion thereof, beſides his coſts and charges by him laid out about his ſuit in this behalf, to 86 *l.* and for thoſe coſts and charges to 40 *s.* and if upon the whole matter aforeſaid, by the jurors aforeſaid in manner and form aforeſaid found, it ſhall ſeem to the court here that the ſaid *Edmund Rumball* is not guilty of the premiſſes within laid to his charge by the declaration aforeſaid, then the ſaid jurors upon their ſaid oath ſay, that the ſaid *Edmund Rumball* is not guilty of the premiſſes within laid to his charge by the declaration aforeſaid, as the ſaid *Edmund Rumball* within in pleading thereupon hath alledged. And becauſe, &c.

And the reſt unſold he hath in his hands.

Dalſton, Bart. *againſt* Janſon. 1 Ld. Raym. 58.

London, (to wit) JOHN *Dalſton*, knight and baronet, complains of *Joſhua Janſon*, a common carrier, in cuſtody of the marſhal of the *Marſhalſea* of the lord the king, being before the king himſelf, for that, to wit, that whereas the aforeſaid *Joſhua* on the 16th day of *March* in the year of our Lord 1693, and long before and always afterwards hath been, and now is, a common carrier of goods and chattels, and for his profit hath been accuſtomed to carry the goods and chattels of all perſons whatſoever requiring the carriage thereof from *Wakefield* in the county of *York* unto *London*, and from *London* aforeſaid unto *Wakefield* aforeſaid, for all the ſaid time, for a reward to be therefore had.

Count againſt a common carrier.

had. And whereas by the law and custom of this kingdom of *England*, every common carrier of goods and chattels, who receives the goods and chattels of any person so to be carried, is bound to keep and carry the same without substraction and loss, so that by the default of such common carrier, or his servants, damages may not in any manner come to pass. And whereas the said *John* on the same 16th day of *March* in the year of our Lord 1693 abovesaid at *London* aforesaid, that is to say, in the parish of the blessed *Mary of the Arches* in the ward of *Cheape*, was possessed of the goods and chattels following, that is to say, of one deal box, and one hundred pieces of gold coin, called guineas, of lawful money of *England* as of his own proper goods, and chattels; and the aforesaid *John* being thereof so possessed, on the same 16th day of *March* in the year of our Lord 1693 abovesaid at *London* aforesaid, to wit, in the parish and ward aforesaid, he the said *John* then and there delivered the box aforesaid, with the said one hundred pieces of gold coin, called guineas, to the aforesaid *Joshua* to carry the same safely and securely from *London* aforesaid unto *Wakefield* aforesaid for a reward; and the aforesaid *Joshua* then and there had and received the said box and the said 100 pieces of gold coin, called guineas, being therein to be carried and delivered in form aforesaid: neverthelefs the said *Joshua* at any time afterwards until now hath not delivered the box aforesaid, with the said 100 pieces of gold being therein, to him the said *John*: but the box aforesaid, and the said 100 pieces of gold coin being therein, afterwards, to wit, on the 17th day of *March* in the year of our Lord 1693 abovesaid, at *London* aforesaid in the parish and ward aforesaid, for default of the good keeping of him the said *Joshua* were lost. And also whereas on the 16th day of *March* in the year of our Lord 1693 abovesaid, at *London* aforesaid, to wit, in the parish and ward aforesaid, the said *John* was possessed of other goods and chattels following, to wit, of one deal box, and 100 pieces of gold coin, called guineas, of lawful money of *England*, as of his own proper goods and chattels; and being so possessed thereof, he the said *John* afterwards, to wit, on the same 16th day of *March* in the year of our Lord 1693 abovesaid, at *London* aforesaid in the parish and ward aforesaid, casually lost those goods and chattels out of his hands and possession; which said goods and chattels afterwards, to wit, the same 16th day of *March* in the year of our Lord 1693 abovesaid, in the parish and ward aforesaid, came to the hands and possession of the aforesaid *Joshua*, by finding: nevertheless the

Count in trover.

the said *Joshua* knowing the said goods and chattels last mentioned to be the proper goods and chattels of the aforesaid *John*, and of right to belong and appertain to him the said *John*, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the aforesaid *John* in this behalf, hath not yet delivered the said goods and chattels last mentioned to him the said *John*, altho' often requested, &c. but the goods and chattels last mentioned afterwards, to wit, on the 17th day of *March* in the year of our Lord 1693 abovesaid, at *London* aforesaid in the parish and ward aforesaid, converted and disposed of to the proper use and benefit of him the said *Joshua*, to the damage of him the said *John* of 150*l.* and thereupon he brings suit, &c.

General issue Not guilty.

Fletcher *against* Ingram. 1 Ld. Raym. 69.

Staffordshire, (to wit.) JOSEPH *Ingram* and *John Hale* were summoned to answer to *James Fletcher* of a plea, wherefore they took one mare of him the said *James*, and unjustly detained her, against gages and pledges, &c. And whereupon the said *James* by *John Lilly* his attorney complains, that the aforesaid *Joseph* and *John* on the 20th day of *February* in the seventh year of the reign of the lord *William* the third, now king of *England*, &c. at *Shewston* in the county aforesaid, in a certain place there called *The Lane*, took the mare aforesaid of him the said *James*, and unjustly detained her, against gages and pledges until, &c. and whereupon the said *James* saith that he is injured, and hath damage to the value of 20*l.* and thereupon he brings suit, &c.

Replevin.

And the aforesaid *Joseph* and *John Hale* by *Thomas Callow* their attorney come and defend the force and injury when, &c. and as bailiffs of *Rowland Fryth*, gent. well acknowledge the taking of the mare aforesaid, in the place in which &c. and justly, &c. because they say, that the same place in which the taking of the mare aforesaid is supposed to be done, containeth, and at the said time when the same taking of the mare is supposed to be done, did contain in itself one acre of land with the appurtenances, in *Shewston* aforesaid; which said town of *Shewston* is, and from the said time, when, &c. and also from time whereof the memory of man is not to the contrary, was within the manor of *Shewston* with the appurtenances, in the county of *Stafford* aforesaid, of which said manor, with the appurtenances, the aforesaid *Rowland* is, and at the said time, when, &c. and long before was seised in his demesne as of fee; and the said *Rowland*, and all those

Defendants make cognizance as bailiffs of the lord of the manor.

Prescription to hold a court-leet.

Demurrer to the cognizance.

And the aforesaid *James* saith, that by any thing by the aforesaid *Joseph* and *John* above in the cognizance aforesaid in pleading alledged, they the said *Joseph* and *John* ought not to acknowledge the taking of the mare aforesaid in the said place, &c. to be just, because he saith, that the plea aforesaid by them the said *Joseph* and *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law for the acknowledging the taking of the mare aforesaid in the said place in which, &c. to be just, and that he, to that cognizance in manner and form above made and pleaded, hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, he the said *James* prays judgment and his damages, by occasion of the taking and unjustly detaining of the mare aforesaid, to be adjudged to him, &c.

Joinder in demurrer.

And the aforesaid *Joseph* and *John* say, that the plea aforesaid by them the said *Joseph* and *John* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law for them the said *Joseph* and *John* to acknowledge the taking of the said mare in the said place in which, &c. to be just; which said plea, and the matter in the same contained, they the said *Joseph* and *John* are ready to verify and prove, as the court, &c. And because the said *James* to that cognizance hath not pleaded or answered, nor the same hath hitherto in any manner denied, they the said *Joseph* and *John* pray judgment, and a return of the mare aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And because the court of the said lord the king now here is not yet advised of the giving of their judgment of and upon the premisses, day is thereupon given to the parties aforesaid, before the lord the king from the day of ——————— wheresoever, &c. to hear their judgment of and upon the premisses aforesaid, for that the court of the said lord the king now here are not yet advised, &c.

Curia advisare vult.

Trinity

Trinity *Term in the seventh Year of King* William *the Third.* Roll 1703.

Laughton *against* Ward. 1 Ld. Raym. 75. *Reported by the Name of* Lawton *against* Ward.

Winford.

Yorkshire, (to wit) THOMAS *Ward* late of *Tickhill* in the county aforesaid, yeoman, was attached to answer to *William Laughton*, gent. of a plea of trespass upon the case, *&c.* And whereupon the said *William* by *A. B.* his attorney complains, that whereas on the 10th day of *May* in the 6th year of the reign of the lord *William* now king, and lady *Mary* the second, late queen of *England*, *&c.* and long before, and continually afterward until now, he the said *William Laughton* was seised, and yet is seised of, and in one close of land, with the appurtenances, called *Langdale*, lying and being in the parish of *Tickhill* aforesaid, and of one close of meadow, with the appurtenances, called *Goody Ing*, lying and being in the parish aforesaid, and next adjoining to the said close called *Langdale*, in his demesne as of fee; and he the said *William Laughton*, and all those whose estate he the said *William Laughton* now hath, and for all that time had of and in the tenements aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have a certain way, as well a footway as an horseway, and for their carts and carriages from the king's common highway in the parish of *Tickhill* aforesaid; which said king's way leads between the towns of *Tickhill* aforesaid and *Wadworth* in the county aforesaid, in, by and through a certain place called *Baddy Well Lane*, lying within the parish of *Tickhill* aforesaid, and so unto and into a certain other place called *Langdale's Lane*, and from thence unto and into the said close called *Langdale*, and so backwards from that close unto the king's way aforesaid, every year, at all times of the year through the way aforesaid, in form aforesaid described, as to his tenements aforesaid, with the appurtenances, belonging: nevertheless the said *Thomas* not being ignorant of the premisses, but contriving and fraudulently intending him the said *William Laughton* in this behalf unjustly to aggrieve

Action upon the case for disturbing plaintiff in the use of his way.

grieve

grieve and to hinder, and, as much as he could, to deprive him the said *William Laughton* of the use of his way aforesaid, on the said 10th day of *May* in the 6th year abovesaid, with his carts and carriages, to wit, with the wheels thereof, the way aforesaid in the said place called *Badsley Well Lane*, insomuch spoiled and damaged, that the said way there became of no use to him the said *William Laughton*, to the damage of him the said *William Laughton* of 20*l.* and thereupon he brings suit, &c.

Justification for a way through the way in the declaration.

And the said *Thomas* by *Robert Vescy* his attorney comes and defends the force and injury when, &c. and saith, that the said *William* ought not to have his said action against him, because protesting that the declaration aforesaid, and the matter in the same contained, are not sufficient in law to have the said action of the said *William* to be maintained against him the said *Thomas*: nevertheless for plea the said *Thomas* saith, that one *William Vescy*, gent. on the said 10th day of *May* in the 6th year abovesaid, and long before and continually afterwards until now was seised, and yet is seised, of and in one close of land called *Badsley Well Close*, with the appurtenances, in the parish of *Tickhill* aforesaid, in his demesne as of fee; and that he the said *William Vescy*, and all those whose estate he hath, and for that time had, of and in his close aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have used, and had, and have been accustomed to use and have a certain way, as well a horseway as a footway, and for their carts and carriages from the said king's common way in *Tickhill* aforesaid, in the declaration aforesaid above specified, in, by, and through the said place called *Badsley Well Lane*, and from thence unto, and into the said close of him the said *William Vescy* called *Badsley Well Close*, and so backward from the same close called *Badsley Well Close*, through the same way unto the king's common way aforesaid, in *Tickhill* aforesaid in every year, at all times of the year, at his will and pleasure; by which he the said *Thomas*, as servant of the aforesaid *William Vescy*, and by his command, on the said 10th day of *May* in the 6th year abovesaid, with the carts and carriages of him the said *William Vescy*, from the king's common way aforesaid, in, by, and through the said place called *Badsley Well Close*, and so back again, went, returned and passed by the way aforesaid in form aforesaid described, using that way, as it was well lawful for him to do; and so by going, returning and passing in, by, and through the same way he the said *Thomas*, the soil of that way in the said place called *Badsley Well Lane*, with the wheels of those carts and carriages a little subverted, doing as little damage as he could

could in that way, which are the same spoiling and damaging of the aforesaid way in the said place called *Badsley Well Lane*, whereof the aforesaid *William Laughton* above himself now complains; and this he is ready to verify: wherefore he prays judgment if the aforesaid *William Laughton* ought to have his said action against him the said *Thomas*, &c.

Replication confesses the way of defendant.

And the said *William Laughton* saith, that he by any thing before alledged ought not to be barred from having his said action thereof agaainst the said *Thomas*, because he saith, that well and true it is that the said *William Vescy*, gent. on the said 10th day of *May* in the 6th year abovesaid, and long before, and continually afterwards until now was seised, and yet is seised of, and in the said close of land called *Badsley Well Close*, with the appurtenances, in the parish of *Tickhill* aforesaid, in his demesne as of fee; and that he the said *William Vescy*, and all those whose estate he hath, and for the time aforesaid had of and in the close aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have used and had, and have been accustomed to use and have a certain way, as well a horseway as a footway, for his carts and carriages, from the said king's common way in *Tickhill* aforesaid, in the declaration above specified, in, by, and through the said place called *Badsley Well Lane*, and from thence unto, and into the said close of him the said *William Vescy*, called *Badsley Well Close*, and so backward from the said close called *Badsley Well Close*, by the same way unto the king's common way aforesaid, at *Tickhill* aforesaid in every year, at all times of the year, at his will and pleasure, as the said *Thomas* above in pleading thereof hath alledged: but he the said *William Laughton* further saith, that the said *Thomas* in using the way aforesaid with his carts and carriages aforesaid from the king's common way aforesaid, in, by, and through the said place called *Badsley Well Lane*, and from thence unto, and into the said close called *Badsley Well Close*, and beyond the said close called *Badsley Well Close*, into a certain other close of him the said *William Vescy* there called *Warton Langdalls* and so backward from the said close called *Warton Langdalls* unto the said close called *Badsley Well Close* aforesaid, and so unto the king's way aforesaid through the way aforesaid, in form aforesaid described, unjustly and contrary to the form of the prescription aforesaid, went, returned and journeyed in going to the said close called *Warton Langdalls*, and from thence by returning with his carts and carriages aforesaid in form aforesaid, and by the way aforesaid, to wit, with the wheels of his carts and carriages aforesaid, the way aforesaid in the said place called *Badsley Well Lane*, in-so-much spoiled and damaged that the said way there became of no use

But that defendant went beyond the close to which he prescribed to have a way.

use to him the said *William Laughton*, as he the said *William Laughton* above hath thereof declared against him; and this he is ready to verify: wherefore he prays judgment and his damages, by occasion of the premisses, to be adjudged to him, *&c.*

Rejoinder alledges no new matter, but relies on the matter before.

And the said *Thomas*, for that the said *William Laughton* above hath acknowledged that the said *William Vesey*, and all those whose estate he hath, and had as before is set forth, of, and in his close aforesaid called *Badsley Well Close*, with the appurtenances, from time whereof the memory of man is not to the contrary, have used, and had, and have been accustomed to use and have the way aforesaid leading between the king's common way aforesaid, and that close, by, and through the said place called *Badsley Well Lane* in every year, at all times of the year, at his will and pleasure, as the said *Thomas* above hath alledged; and so the way aforesaid by and through the said place called *Badsley Well Lane*, doth not belong to the said tenements of the said *William Laughton only*, as he hath above supposed: and for that it was well lawful, and is lawful for him the said *William Vesey*, being in the said close called *Badsley Well Close*, from thence into his said other close called *Warton Langdalls*, and backward from thence into the said close called *Badsley Well Close*, to go and return at his will and pleasure, and this without any damage whatsoever to be done to any person thereby, as before prays judgment, *&c.*

Demurrer, and joinder in demurrer.

Brownlow *against* Hewley. 1 Ld. Raym. 82.

[illegible] for rent [illegible] an executor [illegible] an executor [illegible] assignee [illegible] the whole

JOHN Hewley late of the city of *York* in the county of the city of *York*, knt. was summoned to answer to *John Brownlowe*, bart. and *William Brownlowe*, esq; executors of the will of *John Brownlowe*, bart. deceased, late executor of the will of *Richard Brownlowe*, esq; of a plea, that he render to them 550*l.* which he unjustly detains from them. And whereupon they the said *J. B.* and *W. B.* the now plaintiffs, by *E. C.* their attorney say, that whereas one *John Walter*, knt. *James Fullerton* and *Thomas Trevor*, knt. on the first day of *September* in the 3d year of the reign of the lord *Charles* the first, late of *England*, *&c.* were possessed (among other things) of a certain park called *H. Park* in the parish of *K.* in the county of *York*, for the term of 99 years, beginning from the feast of Saint *Michael* the archangel in the 14th year of the reign of the lord *James* the first, late king of *England*, *&c.* and being so possessed thereof, they the said

J. W.

J. W. J. F. and *T. T.* afterwards, to wit, on the said first day of *September* in the third year of the reign of the lord the late king *Charles* the first abovesaid, at the said parish of *K.* by their certain indenture there made between the said *J. W. J.* and *T.* by the names of *J. W*, knt. chief baron of the court of exchequer of the lord the king, *J. F.* knt. one of the gentlemen of the bed-chamber of the lord the king, and *T. T.* knt. one of the barons of the said court of exchequer, of the one part, and *C. H.* esq; *W. L.* gent. *T. F.* gent. and *H. G.* gent. by the names of, &c. (as in the deed) of the other part, (a counterpart whereof, sealed with the seals of the said *C. W. L. T. F.* and *H.* they the said *J. B.* and *W. B.* the now plaintiffs, bring here into court, the date whereof is the same day and year) granted and assigned to the said *W. L. F.* and *H.* the said park, with the appurtenances, (among other things) by the names of all that lordship or manor of *C.* with all and singular the rights, members and appurtenances thereof in the county of *Gloucester*, then lately parcel of the lands and possessions of *Henry* then late prince of *Wales*, and before that time parcel of the possessions of the then late monastery of *S.* and of all that park and inclosed land called *H. Park*, with the appurtenances, in the said county of *York*, and of the herbage and pannage of the same park, and of the keepership as well of the deer as of the lodges and house there; and all those closes or pastures called *V.* sometime inclosed within the park aforesaid, parcel or reputed parcel of the dutchy of *Lancaster*, and parcel or reputed parcel of the honour of *K.* in the said county of *York*, and of all and singular the messuages, houses, edifices, buildings, barns, stables, dovehouses, yards, orchards, gardens, chases, warrens, vivaries, fishings, streams, pools, lands, tenements, meadows, feedings, pastures, woods, underwoods, commons, wastes, furze, moors, marshes, void grounds, waifs, &c. to have, hold and enjoy the premisses aforesaid, with the appurtenances, to the said *W. L. T. F.* and *H. G.* their executors, administrators and assigns, for and during the whole remainder and residue of the said term of 99 years, then to come and unexpired; yielding and paying therefore yearly during the whole term aforesaid then to come and unexpired, to the said *J. W. J. F.* and *T. T.* their executors, administrators and assigns, the several annual rents or sums of money in the same indenture afterwards mentioned, to wit, for the said lordship of *C.* with the appurtenances, the annual rent or sum of 97 *l.* 12 *s.* 10 *d.* ½ and for the said park of *H.* with the appurtenances, the yearly rent or sum of 100 *l.* of lawful money of *England*, at the feast of Saint *Michael* the archangel and the annun-

That *J. W.* &c. were possessed of a park for 99 years; and assigned it to *W. L.* and others.

To hold for the residue of the said term.

Rendering for the said park 100 *l.* *per ann.* &c.

annunciation of the blessed virgin *Mary*, by even and equal portions, to be paid to the hands of the bailiff, or particular receiver of the premisses for the time being, as by the same indenture more fully appears: by virtue of which said grant and assignment the aforesaid *W. L. T. H.* and *H. G.* into the park aforesaid, with the appurtenances, (among other things) entered, and were possessed thereof; and being so possessed thereof, and the said *J. W. J. F.* and *T. T.* being possessed of the aforesaid annual rent, so as aforesaid reserved during the said term, the aforesaid *J. W. J. F.* and *T. T.* afterwards to wit, the fourth day of *March* in the 3d year of the reign of the said lord *Charles* the first, late king of *England* abovesaid, at the parish of *K.* by a certain indenture there made between the said *J. W. J. F.* and *T. T.* by the names of, &c, (as in the deed) of the one part, and the said *Richard Brownlowe*, by the name of *Richard Brownlowe* of the *Inner Temple*, *London*, esq; of the other part, (one part of which said indenture, sealed with the seals of the said *J. W. J. F.* and *T. T.* they the said *J. B.* and *W. B.* the now plaintiffs, bring here into court, the date whereof is the same day and year) granted to the said *R. B.* (among other things), all the said annual rent of 100 *l.* so as aforesaid, to be paid for the aforesaid park of *H.* to have and to hold the said annual rent to the said *R. B.* his executors and assigns, to his and their own proper use and uses, from the time of the sealing and delivery of the same indenture last mentioned, for and during the residue of the said term of 99 years then to come and unexpired, as by the said indenture (among other things) more fully appears; to which said grant of the rent aforesaid, they the said *W. L. T. F.* and *H. G.* being possessed of the said park, with the appurtenances, as aforesaid, afterwards, to wit, on the 20th day of *March* in the 3d year of the reign of the late king *Charles* the first aforesaid, at the said parish of *K.* themselves attorned and agreed: by virtue of which grant, and by reason of the attornment and agreement aforesaid, the said *R. B.* was possessed of the said annual rent of 100 *l.* for the residue of the term aforesaid; and being so possessed thereof, the said *Richard* afterwards, to wit, on the first day of *January* in the year of our Lord 1637, at the parish of *K.* made his last will and testament in writing, and by the same will appointed the said *J. Brownlowe*, now deceased, and then being in full life, executor of his will aforesaid, and afterwards there died possessed of the said annual rent as aforesaid, after whose death the said *J. B.* now deceased, in his life-time took upon himself the burthen of the execution of the said will of the said *R.* and proved that will in due form of law, to wit,

4 *March*, 3 *Car.* 1. Grant to the said testator *Richard Brownlowe* the said rent of 100 *l.* for the residue of the said term.

Attornment to the said grant, 1 *Jan.* 1637. *R. B.* made his will, and the said *J. B.* his executor.

at

at the said parish of *K.* and was possessed of the annual rent aforesaid, by reason of the execution of that will. And the aforesaid *J. B.* and *W. B.* the now plaintiffs, further say, that the estate of them the said *W. L. T. F.* and *H. G.* of and in the park aforesaid, with the appurtenances, by virtue of the demise aforesaid by the said *J. W. J. F.* and *T. T.* to the said *L. T. F.* and *H. G.* made afterwards, to wit, on the 20th day of *May*, in the 20th year of the reign of the lord *Charles* the second, late king of *England*, &c. at the aforesaid parish of *K.* came to the said *J. H.* by assignment; by virtue whereof the said *J. H.* was and yet is possessed of the park aforesaid, with the appurtenances for the residue of the term aforesaid; and the aforesaid *J. H.* being so possessed thereof, and the aforesaid *J. B.* now deceased, being in his life-time possessed of the said annual rent as aforesaid, the said *J. B.* (now deceased) afterwards in his life-time, to wit, on the 3d day of *September* in the 31st year of the reign of the lord *Charles* the second, late king of *England*, &c. at the said parish of *K.* made his last will and testament in writing, and by the said will appointed the said *J. B.* and *W. B.* the now plaintiffs, executors of his said will, and afterwards there died possessed of the said annual rent as aforesaid; after whose death the said *J. B.* and *W. B.* the now plaintiffs, took upon themselves the burthen of the execution of the said will, and proved that will in due form of law, to wit, at the parish of *K.* and were and yet are possessed of the annual rent aforesaid, by reason of the execution of that will; and being so possessed thereof, and the said *J. Hewley* being possessed of the park aforesaid, with the appurtenances, five hundred and fifty pounds of the annual rent aforesaid, for five years and one half of an year, ending at the feast of the annunciation of the blessed virgin *Mary*, in the 7th year of the reign of the lord the now king, at the same feast, to them the said *J. B.* and *W. B.* the now plaintiffs, were in arrear, and yet are unpaid; by which an action hath accrued to them the said *J. B.* and *W. B.* the now plaintiffs, to require and have of the said *J. H.* the said 550*l.* nevertheless the said *J. Hewley*, although often requested, the said 550*l.* to them the said *J. B.* and *W. B.* the now plaintiffs, hath not yet rendered, but to render the same to them hath hitherto refused, and yet doth refuse; whereupon they say that they are injured, and have damage to the value of 100*l.* and thereupon they bring suit, &c. And they bring here into court, as well the letters testamentary of the said *R. B.* by which it sufficiently appears to the court here, that the said *J. B.* now deceased, in his life-time, was executor of the will of the said *R. B.* as the letters testa-

That, on the 20th day of *May* in the 20 year of *Car.* 2. the estate came to defendant by assignment.

3 *Sept.* 31 *Car.* 2. the said *J. B.* made his will, and the plaintiffs his executors.

550*l.* of the said rent for 5 years and an half in arrear the 25th *March*, 7 *W.* 3.

By which an action, &c.

mentary of the ſaid *J. B.* deceaſed, by which it ſufficiently appears to the court here, that they the ſaid *J. B.* and *W. B.* the now plaintiffs, are executors of the will of the ſaid *J. B.* deceaſed, and thereof to have adminiſtration, &c.

Bar that defendant was ready upon the land to pay.

And the aforeſaid *John Hewley* by *S. W.* his attorney comes and defends the force and injury when, &c. and as to 50 *l.* parcel of the ſaid 550 *l.* of the rent aforeſaid for half an year, ending at the feaſt of the annunciation of the bleſſed virgin *Mary*, in the ſecond year of the reign of the lord the now king and of the lady *Mary*, late queen of *England*, &c. he the ſaid *J. H.* ſaith, that the aforeſaid *J. B.* and *W. B.* ought not to have their ſaid action thereof againſt him, becauſe he ſaith, that he the ſaid *J. H.* in, and upon that feaſt, for the ſpace of one hour before the ſetting of the ſun of the ſame day, and after the ſetting of the ſun of that day, was in, and upon the park aforeſaid ready to pay to them the ſaid *J. B.* and *W. B.* the ſaid 50 *l.* payable at that feaſt as aforeſaid; and that neither the ſaid *J. B.* nor *W. B.* nor either of them, nor any perſon on their or either of their behalf, were or was then and there ready to receive that rent, and that the ſaid rent at any time afterwards hitherto in and upon the park aforeſaid, with the appurtenances, or any part thereof, by them the ſaid *J. B.* and *W. B.* or either of them, hath not been demanded; and this he is ready to verify: wherefore he prays judgment if the ſaid *J. B.* and *W. B.* ought to have or maintain their ſaid action thereof againſt him; and as to 50 *l.* parcel of the ſaid 550 *l.* of the ſaid rent for another half of an year ended at the feaſt of Saint *Michael* the archangel, in the ſecond year of the reign of the lord the now king, and the lady *Mary* the late queen of *England*, &c. he the ſaid *J. H.* ſaith, that the ſaid *J. B.* and *W. B.* ought not to have their ſaid action thereof againſt him, becauſe he ſaith that he the ſaid *J. B.* in and upon that feaſt, for the ſpace of one hour, before the ſetting of the ſun of the ſame day, and after the ſetting of the ſun of the ſame day, was in and upon the park aforeſaid ready to pay to them the ſaid *J. B.* and *W. B.* the ſame 50 *l.* payable at that feaſt as aforeſaid; and that neither the ſaid *J. B.* and *W. B.* nor either of them, nor any other perſon on their or either of their behalf, were, or was then and there ready to receive that rent; and that the ſaid rent, at any time afterwards hitherto in, and upon the park aforeſaid, with the appurtenances, or any part thereof, by them the ſaid *J. B.* and *W. B.* or either of them, hath not been demanded; and this he is ready to verify: wherefore he prays judgment if the ſaid *J. B.* and *W. B.* ought to have or maintain their ſaid action thereof againſt him, &c. (there

And that the rent hath not been ſince demanded.

are

are the like pleas to every other half year's rent demanded in the declaration.)

And the said *J. B.* and *W. B.* say, that the said several pleas of the said *J. H.* in manner and form aforesaid pleaded, and the matter in the same contained, are not sufficient in law to bar the said *J. B.* and *W. B.* from having their said action thereof against him, and that they, to those pleas in manner and form aforesaid pleaded, have no necessity, nor are they bound by the law of the land to answer; and this they are ready to verify: wherefore for want of sufficient pleas in this behalf, they the said *J. B.* and *W. B.* pray judgment and their said debt, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c. And for causes of demurrer in law in this behalf, they the said *J. B.* and *W. B.* demonstrate and shew to the court here the causes following, to wit, because that the said *J. H.* in his several pleas aforesaid hath not pleaded or alledged that he was ready to pay to them the said *J. B.* and *W. B.* the said money in the said respective pleas mentioned, nor hath brought here into court that money to be paid to them the said *J. B.* and *W. B.* and for that, because those pleas are double, uncertain, and want form, &c.

Demurrer.

Causes of demurrer.

And the said *J. H.* for that he hath sufficient matter in law in the said several pleas to bar the said *J. B.* and *W. B.* from having their said action against him the said *J. H.* above in pleading hath alledged, which he is ready to verify; which said matter they the said *J. B.* and *W. B.* have not denied, nor in any manner answered to the same, and have wholly refused to admit that averment, as before prays judgment, and that the said *J. B.* and *W. B.* may be barred from having their said action thereof against him the said *J. H.* &c.

Joinder in demurrer.

Hussey *against* Jacob. 2 Ld. Raym. 87.

London, (to wit) WILLIAM *Hussey* complains of *Alexander Jacob*, in custody of the marshal of the *Marshalsea*, of the lord the king, being before the king himself, for that, to wit, that whereas the city of *London* in this kingdom of *England* is, and from time whereof the memory of man is not to the contrary, hath been an ancient city; and also whereas the town of *Hereford* in this kingdom of *England* is, and for all the time abovesaid hath been an ancient town; and also whereas there is had and existeth, and for all the time abovesaid there was had and hath been a certain ancient and laudable custom used and approved amongst merchants, and

Declaration on a bill of exchange against the acceptor on the custom of merchants.

and other persons using commerce, residing in *Hereford* aforesaid, and merchants and other persons using commerce, dwelling in *London* aforesaid, that is to say, that if any merchant or other person residing in *Hereford* aforesaid, should make any bill of exchange according to the custom of merchants, and direct the same bill of exchange to another person using commerce, dwelling in *London* aforesaid, and by the same bill request the same merchant or other person using commerce residing in *London* aforesaid, in such bill of exchange named, to whom the same bill of exchange should be so directed, to pay any sum of money in such bill of exchange mentioned, to any other merchant or other person in the same bill of exchange at any time in such bill of exchange specified, and that if such merchant or other person dwelling at *London* aforesaid, to whom any such bill of exchange hath been so directed hath accepted such bill of exchange to him so directed as aforesaid, according to the custom of merchants, as well such merchant, or other person to whom such bill of exchange hath been so directed, hath been chargeable by such acceptance, and for all the time aforesaid hath been accustomed to be chargeable to pay such sum of money in such bill of exchange mentioned, to such merchant or other person in such bill of exchange named, at the day or time in such bill of exchange appointed for the payment thereof, according to the tenor and effect of such bill of exchange. And whereas the right honourable the lord *Chandois* on the 21st day of *October* in the year of our Lord 1693, being at *Hereford* aforesaid, and using commerce, that is to say, at *London* aforesaid in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, made his first bill of exchange bearing date the same day and year, and directed the same bill of exchange to the aforesaid *Alexander Jacob*, then residing and dwelling and using commerce at *London* aforesaid in the parish and ward aforesaid; and by the same bill of exchange the aforesaid lord *Chandois* requested the aforesaid *Alexander Jacob* to pay within a month after sight of his first bill of exchange the sum of 120 pieces of gold, called guineas, to the aforesaid *William Hussey*, by the name of captain *Hussey*, the aforesaid lord *Chandois* and *William Hussey* then and there using commerce; and the said *William* afterwards on the 28th day of the same month of *October* in the year abovesaid, at *London* aforesaid in the parish and ward aforesaid, did shew the said bill of exchange to him the said *Alexander*, and then and there requested the said *Alexander* to accept the said bill of exchange, and to pay to him the said *William* the said 120 pieces of gold, called guineas, according to the tenor of the bill aforesaid, and thereupon the said *Alexander* then and there upon sight thereof accepted the

the ſaid bill of exchange, according to the cuſtom of merchants aforeſaid, by reaſon of which ſaid acceptance of the ſaid bill of exchange, and by reaſon of the premiſſes, he the ſaid *Alexander*, according to the cuſtom aforeſaid ſo uſed and approved as aforeſaid, became chargeable to pay to the aforeſaid *William* the ſaid 120 pieces of gold in the ſaid bill of exchange mentioned, according to the form and effect of the ſaid bill; and the aforeſaid *Alexander* afterwards, to wit, the day and year laſt mentioned, at *London* aforeſaid at the pariſh and ward aforeſaid, in conſideration of the premiſſes aforeſaid aſſumed upon himſelf, and to the ſaid *William* then and there faithfully promiſed that he the ſaid *Alexander* the ſaid 120 pieces of gold called guineas, in the ſaid bill of exchange mentioned, would well and faithfully pay and ſatisfy to the ſaid *William*, according to the form and effect of the ſaid bill of exchange. And alſo whereas the aforeſaid *Alexander* afterwards on the firſt day of *December* in the year of our Lord 1693, at *London* aforeſaid at the pariſh and ward aforeſaid, was indebted to the ſaid *William* in other 120 pieces of gold, called guineas, of the value of 132 pounds of lawful money of *England*, for ſo much money by him the ſaid *William* for the ſaid *Alexander*, at the ſpecial inſtance and requeſt of him the ſaid *Alexander*, before that time paid, laid out and diſburſed; and being thereof ſo indebted, the aforeſaid *Alexander*, in conſideration thereof, aſſumed upon himſelf, and to the ſaid *William* then and there faithfully promiſed that he the ſaid *Alexander* would well and faithfully pay and ſatisfy to him the ſaid *William* the ſaid 120 pieces of gold, called guineas, of the value of the 132 pounds laſt mentioned, when he ſhould be thereunto requeſted. And alſo whereas the ſaid *Alexander* afterwards, to wit, on the ſaid firſt day of *December* in the year laſt abovesaid, at *London* aforeſaid in the pariſh and ward aforeſaid, was indebted to the ſaid *William* in other 132 pounds of lawful money of *England*, for ſo much money by the ſaid *William* to the ſaid *Alexander*, at the ſpecial inſtance and requeſt of him the ſaid *Alexander*, before that time lent and advanced; and being ſo indebted, the ſaid *Alexander*, in conſideration thereof, aſſumed upon himſelf, and to the ſaid *William* then and there faithfully promiſed that he the ſaid *Alexander* would well and faithfully pay and ſatisfy to the ſaid *William* the ſaid 132 pounds laſt mentioned, when he ſhould thereunto be required. And alſo whereas the ſaid *Alexander* afterwards, to wit, on the ſaid firſt day of *December* in the year laſt abovesaid, at *London* aforeſaid in the pariſh and ward aforeſaid, was indebted to the ſaid *William* in other 120 pieces of gold, called guineas, of the value of 132 pounds of like lawful money

Indebitatus aſſumpſit for money laid out.

The like for money lent.

The like for money had and received to the plaintiff's uſe.

money of *England* for the like sum of money by the said *Alexander* for the said *William*, and to the use of him the said *William* before that time had and received; and being thereof so indebted, the said *Alexander*, in consideration thereof, assumed upon himself, and to the said *William* then and there faithfully promised that he the said *Alexander* would well and faithfully pay and satisfy to the said *William* the said 120 pieces of gold, called guineas, last mentioned, when he should be thereto requested: nevertheless the said *Alexander* not at all regarding his said several promises and undertakings in form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *William* in this behalf, hath not paid to the said *William* the said 120 pieces of gold, called guineas, in the said first promise above mentioned, at a month after sight of the said bill of exchange above mentioned, or the said several sums of money in the said second, third and fourth promises, although to pay the said several sums of money in the said second, third and fourth promises above mentioned, to him the said *William*, the said *Alexander* afterwards, to wit, on the tenth day of *April* in the year of our Lord 1694, and often afterwards, at *London* aforesaid in the parish and ward aforesaid, was requested by the said *William*, but hath hitherto wholly refused, and yet doth refuse, to pay the same to him, whereupon the said *William* saith that he is injured, and hath damage to the value of 400*l.* and thereupon he brings suit, &c. And now here at this day, to wit, *Friday* next after the morrow of the Holy Trinity in this same term, until which day the said *Alexander* had leave to impart to the said bill, and then to answer before the lord the king at *Westminster*, come as well the said *William* by his said attorney, as the said *Alexander* by *Vincent Skynes* his attorney; and the said *Alexander* defends the force and injury when, &c. and as to the second, third and fourth promises and undertakings in the said declaration abovementioned, the said *Alexander* saith, that he did not assume upon himself in manner and form as the said *William* above complains against him; and of this he puts himself upon the country, and the said *William* thereof likewise: and as to the said first promise and undertaking, in the said declaration above mentioned, the said *Alexander* saith, that he by virtue of the said bill of exchange in the first promise and undertaking abovementioned by him as aforesaid made, ought not to be charged, because protesting that the said lord *Chandois* at the said time of making the said bill of exchange, or at any time afterwards, was not a person using commerce; protesting also, that the said *William* at the said time of making the said bill of exchange was not a person using commerce,

Breach of the first promise.

And of the other three promises.

Imparlance.

General issue to the 2d, 3d, and 4th counts.

Plea as to the first count.

Protestando that lord *Chandois* was not a merchant;

and that the plaintiff was not a merchant.

commerce, as the ſaid *William* by his ſaid declaration above ſuppoſes; nevertheleſs the ſaid *Alexander* for plea ſaith, that after the 29th day of *September* in the year of our Lord 1664, and before the making the ſaid bill of exchange, to wit, on the 21ſt day of *October*, in the year of our Lord 1693 aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, the ſaid lord *Chandois* and *William* played between themſelves with dice at a certain game called hazard, and that the ſaid lord *Chandois* then and there at that game at one time and at one meeting loſt to the ſaid *William* the above mentioned ſum of 120 pieces of gold, called guineas, and that for ſecuring the payment of the ſaid 120 pieces of gold loſt by him the ſaid lord *Chandois* to the ſaid *William* as aforeſaid, he the ſaid lord *Chandois* afterwards, to wit, on the ſaid 21ſt day of *October* in the year of our Lord 1693 aboveſaid, at the pariſh and ward aforeſaid, directed his firſt bill of exchange to the ſaid *Alexander*, and by the ſame bill of exchange the ſaid lord *Chandois* requeſted him the ſaid *Alexander* to pay at a month after ſight of the ſaid bill of exchange the ſaid ſum of 120 pieces of gold, called guineas, to the ſaid *William*; and afterwards, to wit, on the ſaid 28th day of *October* in the year laſt aboveſaid, upon ſight of the ſaid firſt bill of exchange, he the ſaid *Alexander*, at *London* aforeſaid in the pariſh and ward aforeſaid, accepted the ſaid bill of exchange for the payment of the ſaid 120 pieces of gold, and aſſumed upon himſelf, as the ſaid *William* by the declaration aforeſaid above hath ſuppoſed; by reaſon of which premiſſes, and by force of the ſtatute in that caſe made and provided, the ſaid firſt bill of exchange by him the ſaid *Alexander* as aforeſaid accepted, and the acceptance thereof, and the promiſe and undertaking of him the ſaid *Alexander*, by him the ſaid *Alexander* as aforeſaid made, became and were, and now are, void and of no force in law: and this he is ready to verify: wherefore he prays judgment, if he by virtue of the bill of exchange aforeſaid by the aforeſaid lord *Chandois*, againſt the form of the ſtatute aforeſaid as aforeſaid given and made, and by him the ſaid *Alexander* in form aforeſaid accepted, ought to be charged, &c. And the ſaid *William* ſaith, that he by any thing by the ſaid *Alexander* above in pleading alledged, as to the firſt promiſe and undertaking aforeſaid, ought not to be barred from having his ſaid action thereof againſt him the ſaid *Alexander*, becauſe he ſaith, that the plea aforeſaid by the ſaid *Alexander* in manner and form aforeſaid above pleaded, and the matter in the ſame contained, are not ſufficient in law to preclude him the ſaid *William* from having his ſaid action thereof againſt the ſaid *Alexander*; to which ſaid plea

The ſtat. 14 *Car.* 2. againſt gaming pleaded, that the bill was given for money loſt at hazard by lord *Chandois* to the plaintiff.

Demurrer.

he the said *William* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *William* prays judgment and his damages, by occasion of the non-performance of the said first promise and undertaking, to be adjudged to him, &c. And for cause of demurrer of law in this behalf according to the form of the statute in that case made and provided, he the said *William* sheweth, and to the court here demonstrates these causes following, that is to say, that the plea aforesaid amounts only to the general issue, and also is double, perplexed, uncertain, and wants form, and also is no answer to the declaration aforesaid. And the said *Alexander* saith, that the plea aforesaid by him the said *Alexander*, as to the first promise and undertaking in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to bar him the said *William* from having his said action thereof against him the said *Alexander*; which said plea, and the matter in the same contained, he the said *Alexander* is ready to verify and prove, as the court, &c. And because the said *William* hath not answered to that plea, nor hitherto in any manner denied it, he the said *Alexander*, as before, prays judgment, and that the said *William* may be barred from having his said action thereof against him the said *Alexander*, as to the said first promise and undertaking, &c. But because the court of the said lord the king now here is not yet advised of their judgment to be given of and upon the premisses, day thereupon is given to the parties aforesaid before the lord the king at *Westminster*, until ——— next after ——— to hear their judgment of and concerning the premisses, for that the court of the said lord the king is not yet, &c. And as well to try the issue aforesaid between the parties aforesaid above joined by the country to be tried, as to inquire what damages the said *William Hussey* hath sustained by occasion of the premisses aforesaid, whereupon the parties aforesaid have put themselves upon the judgment of the court, if judgment thereupon shall happen to be given for the said *William* against the said *Alexander Jacob*, let a jury thereupon come before the lord the king at *Westminster* at the said day, and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Joinder in demurrer.

Venire awarded, as well to try the issue as to inquire of damages if judgment be for plaintiff on the demurrer.

Pleas

Pleas before the Lord the King at Westminster *of the Term of Saint* Hilary *in the sixth Year of the Reign of the Lord* William *the Third, King of* England, &c.. Roll 729.

Leigh *against* Brace. 2 Ld. Raym. 101.

Count in ejectment.

Worcestershire, (to wit) BE it remembered, that on *Wednesday* next after eight days of Saint *Hilary* in this same term before the lord the king at *Westminster* came *George Leigh* by *Thomas Callow* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Samuel Brace*, in custody of the marshal, &c. of a plea of trespass and ejectment; and there are pledges of prosecuting to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, (to wit) *Worcestershire*, (to wit) *George Leigh* complains of *Samuel Brace*, in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas one *John Cooks* on the first day of *October* in the 6th year of the reign of the lord *William* the now king and lady *Mary*, late queen of *England*, &c. at the parish of *Bromsgrove* in the county aforesaid, demised, granted and to farm lett to the aforesaid *George* one messuage, 30 acres of land, 10 acres of meadow and 20 acres of pasture, with the appurtenances, situate, lying and being in the parish of *Bromsgrove* aforesaid in the county aforesaid; to have and to hold the tenements aforesaid, with the appurtenances, to him the said *George* and his assigns, from the feast day of Saint *Michael* the archangel then last past unto the full end and term of seven years from thence next following and fully to be compleat and ended; by virtue of which said demise the said *George* entered into the tenements aforesaid, with the appurtenances, and was possessed thereof until the aforesaid *Samuel* afterwards, to wit, on the same first day of *October* in the 6th year abovesaid, with force and arms into the tenements aforesaid, with the appurtenances, in and upon the possession of him the said *George* entered thereupon, and him the said *George* from his farm aforesaid, his said term thereof not being ended, ejected, expelled and removed, and him the said *George* from his possession aforesaid thereof kept out, and yet keeps out,

 and

and other wrongs to the said *George* then and there did, against the peace of the said lord the now king and the late lady the queen, and to the damage of him the said *George* of ten pounds; and thereupon he brings suit, &c.

Not guilty.

And the said *Samuel* by *John Hancocks* his attorney comes and defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country; and the said *George* likewise: therefore let a jury come before the lord the king at *Westminster* on *Tuesday* next after eight days of the purification of the blessed virgin *Mary*; and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the party aforesaid there, &c. Afterwards the process thereupon is continued between the parties of the plea aforesaid by the jury being thereupon respited between them before the lord the king at *Westminster* until *Wednesday* next after fifteen days of *Easter* from thence next following, unless the justices of the lord the king, assigned to take the assises in the county aforesaid, shall first come on *Saturday* the 2d day of *March* at *Worcester* in the county aforesaid, by form of the statute, &c. for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *George* by his said attorney, and the said justices before whom, &c. have sent here their record had before them in these words, (to wit) Afterwards on the day and at the place within contained, before *Giles Eyre*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and *Thomas Breton*, esq; to him the said *Giles Eyre* and *William Gregory*, knt. another justice of the said lord the king, assigned to hold pleas before the king himself, justices of the said lord the king, assigned to take the assizes in the county of *Worcester*, by form of the statute, &c. for this time associated, the presence of the said *William Gregory* not being expected, by virtue of the writ of the lord the king of *Si non omnes*, &c. come as well the within named *George Leigh*, as the within written *Samuel Brace*, by their attornies within contained; and the jurors of the jury, whereof mention is within named, being called come, who being chosen, tried and sworn to speak the truth concerning the matters within contained, say upon their oath, that one *Walter Brace* was seised of the tenements in the declaration within mentioned, in his demesne as of fee; and being so seised thereof, the said *Walter Brace*, before the said time when, &c. to wit, on the 25th day of *July* in the 20th year of the reign of the lord *James* the first,

Nisi prius.

Postea.

Special verdict.

late king of *England*, &c. by his certain charter, sealed with the seal of him the said *Walter*, and to the jury aforesaid in evidence shewn, the date whereof is the same day and year, enfeoffed *Thomas Wilkes* and *Thomas Flavell* of and in the tenements aforesaid, with the appurtenances, to have and to hold to them the said *Thomas* and *Thomas*, and their heirs, to the uses in the said charter specified, the tenor of which said charter follows in these words, To all christian people to whom this present writing shall come, *Walter Brace* of *Forkbury* in the parish of *Bromsgrove* in the county of *Wigorn*, yeoman, sendeth, greeting: know ye, that I the said *Walter Brace*, for the natural love and affection that I bear to my son *Thomas Brace*, and for divers other considerations me especially moving, have given, granted, enfeoffed and confirmed, and by these presents do give, grant, enfeoff and confirm unto *Thomas Wilkes* of *Forkbury* aforesaid, yeoman, and unto *Thomas Flavell* of *Bromsgrove* aforesaid, clerk, their heirs and assigns, all that dwelling-house or tenement, with the appurtenances, which I the said *Walter Brace* purchased of *Stephen Dipple* of *Bromsgrove* aforesaid, and is situate in the high street of *Bromsgrove*, between the land of *Edward Seabright*, esq; and the lands of *Gilbert Butler*, gent. and now in the tenure or occupation of *Walter Rose*; and also one other house or cottage, with the appurtenances, situate and being in *Forkbury* aforesaid, wherein *Gilbert Westley* now dwelleth, together with the close wherein the said cottage standeth, containing by estimation one acre and an half, or thereabouts, be the same more or less; one other close of pasture called by the name of *Whern's Close*, containing by estimation three acres, or thereabouts; one other close of pasture, called by the name of *Woodsell*, containing by estimation five acres, or thereabouts; two other closes called the *Slade Crofts*, containing by estimation six acres, or thereabouts: one day mowth of meadow ground lying in *Long Meadow* next unto the estate there, and two fleeting acres lying in *Broad Meadow*, with all ways, waters, woods, underwoods, commons, profits, commodities, advantages and hereditaments whatsoever unto the said premisses, and every part and parts thereof, belonging or in any wise appertaining; all which said premisses are situate, lying and being in the said parish of *Bromsgrove* and county of *Wigorn*, to have and to hold the said houses or tenements, lands, and all and singular other the premisses, with the appurtenances, and every part thereof, to the said *Thomas Wilkes* and *Thomas Flavell*, their heirs and assigns,

assigns, to the uses, intents and behoofs herein after by these presents mentioned and declared, and to no other use, intent or purpose, that is to say, to the use and behoof of me the said *Walter Brace*, for and during my natural life, and after the decease of me the said *Walter Brace*, to the use and behoof of the aforesaid *Thomas Brace* my son, and his heirs for ever; and for default of issue of the body of the said *Brace*, then to the use and behoof of the right heirs of me the said *Walter Brace* for ever, to be holden of the chief lord or lords of the fee or fees of the premisses, by the rents and services thereof first due and of right accustomed; and I verily the said *Walter Brace* and my heirs the said houses or tenements, lands, and all and singular other the premisses, with the appurtenances, and every part and parcel thereof, unto the said *Thomas Wilkes* and *Thomas Flavell* and their heirs, shall and will warrant and for ever defend by these presents. In witness whereof I the said *Walter Brace* unto this my present writing indented have set my hand and seal the 25th day of *July* in the reign of our sovereign lord king *James*, by the grace of God, of *England*, *France* and *Ireland* king, defender of the faith, &c. the twentieth, and of *Scotland* the fifty-fifth. *Annoque Domini* 1622. By virtue whereof, and also by force of the act of parliament for transferring of uses into possession made and provided, the said *Walter* was seised of the premisses in the said charter mentioned, being the premisses aforesaid in the declaration aforesaid specified, as of his freehold, for the term of his life, the remainder thereof to the said *Thomas Brace* belonging, as the law requireth. And the said jurors further upon their oath say, that the aforesaid *Walter Brace* afterwards and before the said time when, &c. died, and that the said *Thomas Brace*, the son of him the said *Walter*, entered into the tenements in the declaration within written mentioned, and was seised thereof, as the law requireth; and that he the said *Thomas Brace* being so seised thereof, in due manner and form made his last will and testament in writing on the 16th day of *April* in the 33d year of the reign of *Charles* the second, late king of *England*, &c. which said bill follows in these words: In the name of God, *Amen*, the 16th day of *April* in the 33d year of the reign of our sovereign lord *Charles* the second, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. *Annoque Domini* 1681. I *Thomas Brace* of *Forkbury* in the parish of *Bromsgrove* in the county of *Wigorn*, yeoman, being weak of body, but of sound and perfect memory and understanding,

ſtanding, thanks be to God, calling to mind the uncertain ſtate of this life, and being deſirous to ſettle things in order for the leaving the world, I having lived in the enjoyment thereof till a very conſiderable age, do make this my laſt will and teſtament in manner following, revoking by theſe preſents all and every other teſtament or teſtaments, will and wills heretofore by me made, either by word or writing, and this to be taken only for my laſt will and teſtament. Firſt, I bequeath my ſoul unto God my creator, and to Jeſus Chriſt my redeemer, and my body to the earth, from whence it was taken, to be decently buried in ſuch chriſtian manner as to my executor herein after named ſhall be thought moſt convenient, there to reſt until my ſoul and body ſhall meet again and be joined together at the reſurrection: and touching ſuch temporal eſtate as God has been pleaſed to beſtow upon me, I do order, give and bequeath the ſame in manner following: *Imprimis*, I do hereby give and deviſe unto my ſon *Samuel Brace*, during the term of his natural life, eight pounds a year of lawful money of *England*, to be paid him quarterly from the time of my deceaſe, by my executor herein after mentioned, by my ſaid ſon *Samuel*, permitting and ſuffering *William Fowkes* and *Jonathan Wall*, their executors, adminiſtrators and aſſigns, peaceably and quietly to hold and enjoy the lands and tenements and premiſſes to them by me ſeverally leaſed, at and under the covenants ſpecified in their ſeveral leaſes; but if he moleſt or hinder the ſaid *Jonathan Wall* and *William Fowkes* of their quiet enjoying the premiſſes, or any part thereof, to them by me deviſed, then my will is, that my ſaid ſon *Samuel* have four pounds a year only during his life, paid him quarterly by my executor, in full diſcharge and ſatisfaction of the ſaid eight pounds a year. *Item*, I give and bequeath unto my daughter *Elizabeth Brace* three hundred pounds of like money of *England* as followeth, (*viz.*) two hundred pounds within a year, and one hundred pounds more, the remaining part of the ſaid three hundred pounds, within two years after my deceaſe, if ſhe ſo long live, or bear any iſſue of her body, with all my goods that ſhall be in my houſe at *Whern's Aſh* at my deceaſe. *Item*, I give to my grandſon *Henry Cocks* during his natural life, all that my meſſuage or tenement in *Forkbury*, with two acres of land to the ſame belonging, in the poſſeſſion of one *William Perkes*, and four more acres of land to the ſame adjoining, in the poſſeſſion of one *William Oxford*; the rents and profits of the ſaid meſſuage and ſeveral parcels of land to be received and enjoyed by

by my executors till my said grandchild shall attain to the age of 21 years, for the maintenance and education of my said grandchild. *Item*, I give and devise to my grandchildren *Mary* and *Hannah Cooks* all those my two closes of land in *Catshill*, adjoining to the common field there called *Intall field*, containing by estimation about four acres, and three several parcels of land in *Intall field*, containing by estimation three acres. And lastly, I give and devise unto *John Cooks* my son-in-law, whom I make executor of this my last will, and to his heirs on the body of my daughter *Rebecca* begotten, or to be begotten, all my estate, lands, tenements and houses whatsoever in *F·kbury* and *Catshill* in the said parish of *Bromsgrove* and county of *Worcester*, and not herein before devised, and the reversion of the said messuage and lands herein before bequeathed, unto my said grandchild *Henry Cooks*, from and after his decease, paying the legacies and annuities in this my will comprised, &c. And the said jurors further upon their oath say, that the said *Thomas Brace* afterwards died seised of the tenements aforesaid, with the appurtenances, as aforesaid; and that the tenements aforesaid, with the appurtenances, in the declaration aforesaid specified, and the tenements aforesaid in the will aforesaid before recited, and by the same expressed to be devised to the aforesaid *John Cooks* in possession, are the same tenements, with the appurtenances, and not others or divers; and that the said *John Cooks*, after the death of him the said *Thomas Brace*, into the tenements aforesaid, being the tenements in question, entered by colour of the will aforesaid, and was thereof seised, as the law requireth. And the said jurors upon their oath further say, that the said *John Cooks* after the death of the said *Thomas Brace* paid as well all and singular the legacies and annuities in the same will mentioned and comprised at such times, and in the manner and form, as in the same will is directed; as all the just debts and funeral expences of the said *Thomas Brace*, according to the true intention of the said will. And the jurors aforesaid upon their said oath further say, that the within named *Samuel Brace* the now defendant is the son and heir of the body of the said *Thomas Brace*; and that the said *Samuel Brace*, after the death of the said *Thomas* his father, entered into the tenements aforesaid, with the appurtenances, and was seised thereof, as the law requireth. And the aforesaid *John Cooks* afterwards and before the said time when, &c. to wit, on the within written first day of *October* in the 6th year of the reign of the lord *William* now king of *England*, and of the lady

lady *Mary*, late queen of *England*, &c. at the parish of *Bremsgrove* aforesaid within written in the county aforesaid, into the tenements aforesaid, with the appurtenances, entered, and then and there demised, granted and to farm lett to the said *George* the tenements aforesaid, with the appurtenances, to have and to hold the tenements aforesaid, with the appurtenances, to the said *George* and his assigns, from the feast day of Saint *Michael* the archangel then last past unto the full end and term of seven years from thence next following and fully to be compleat and ended: by virtue of which said demise he the said *George* entered into the tenements aforesaid, with the appurtenances, and was thereof possessed, until the said *Samuel* the defendant afterwards, to wit, on the same first day of *October* in the 6th year abovesaid into the tenements aforesaid, with the appurtenances, in and upon the possession of him the said *George* thereupon entered, and him the said *George* from his farm aforesaid, his term not being yet ended, ejected, expelled and removed, and him the said *George* from his possession aforesaid thereof kept out, and yet keeps out. but whether upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, the said *Samuel Brace* the now defendant is guilty of the trespass and ejectment within written, in manner and form as the said *George* within complains against him, or not, the jurors aforesaid are wholly ignorant, and thereupon pray the advice and consideration of the court, &c. And if, upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found, it shall seem to the court of the lord the king here that the said *Samuel Brace* the now defendant is guilty of the trespass and ejectment within written, in manner and form as the said *George* within complains against him, then the said jurors further upon their oath say, that the said *Samuel Brace* is guilty of the trespass and ejectment within written, in manner and form as the said *George Leigh* within complains against him; and they assess the damages of him the said *George Leigh*, by the occasion within written, besides his costs and charges by him about his suit in this behalf laid out, to sixpence, and for those costs and charges to 40*s*. But if, upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found, it shall seem to the court here that the aforesaid *Samuel Brace* the now defendant is not guilty of the trespass and ejectment within written, in manner and form as the said *George* within complains against him, then they the said jurors further say upon their said oath, that the said *Samuel Brace* is not guilty

of

of the trespass and ejectment in the declaration within written specified, as the said *Samuel Brace* within for himself in pleading hath alledged: and because the court of the lord the king now here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king at *Westminster* until ——— next after ——— to hear their judgment of and upon the premisses, for that the court of the said lord the king now here thereof is not yet, &c.

Trinity *Term in the eighth Year of King* William *the Third.* Roll 348.

Markes *against* Marryott. Ld. Raym. 114.

Tempest.

Debt on a bond.

Surry, (to wit.) SIMON *Marryott*, the elder, late of *Chiddingfold* in the county aforesaid, gent. otherwise called *Simonem Marryott Seniorem de Chicldingfold in Com' Surr' Gen'*, was summoned to answer to *William Markes* of a plea that he render to him two hundred pounds, which he oweth to him, and unjustly detains, &c. And whereupon the said *William* by *John Tanner* his attorney saith, that whereas the said *Simon* on the second day of *July* in the seventh year of the reign of the lord the now king, at *Haslemere* in the county aforesaid, by his certain writing obligatory, granted himself to be held and firmly bound to the aforesaid *William*, in the said two hundred pounds to be paid to him the said *William* when he should be thereunto requested: nevertheless the aforesaid *Simon*, although often requested, hath not rendered the said two hundred pounds to him the said *William*, but to render the same to him hath hitherto refused, and yet doth refuse, whereupon he saith that he is injured, and hath damage to the value of ten pounds; and thereupon he brings suit, &c. And he brings here into court the writing aforesaid, which testifies the debt aforesaid in form aforesaid, the date whereof is the day and year above-written.

Bar.

Oyer of condition to perform an award.

And the aforesaid *Simon* by *William Rycroft* his attorney comes and defends the force and injury when, &c. and prays *Oyer* of the writing obligatory aforesaid, and it is read to him, &c. and he also prays *Oyer* of the condition of the same writing, and it is read to him in these words: The condition of this obligation is such, that if the above-bounden *Simon Marryott*, his heirs, executors and administrators, for his and their parts and behalfs, do and shall in all

all things well and truly ſtand to, obey, abide, perform, fulfil and keep the award, order, arbitrament, final end and determination of *Roger Shorter* of *Pitfield* in the pariſh of *Frinſham* in the county of *Surry*, gent. and *Edward Holt* of *Chiddingfold* in the county aforeſaid, gent. arbitrators indifferently elected and named, as well on the part and behalf of the above-bound *Simon Marryott*, as of the above-named *William Markes*, to arbitrate, award, order, judge and determine of and concerning all and all manner of action and actions, cauſe and cauſes of action, ſuits, accounts, bills, bonds, ſpecialties, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever at any time heretofore had, made, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed or depending by or between the ſaid parties, or either of them, ſo as the ſaid award be made in writing or otherwiſe, and ready to be delivered or given up to the ſaid parties, or either of them, as ſhall deſire the ſame, on or before the 14th day of *Auguſt* next enſuing the date of theſe preſents, that then this obligation ſhall be void and of none effect, or elſe ſhall be and remain in full force and virtue; which being read and heard, he the ſaid *Simon* ſaith, that the ſaid *William* ought not to have his action aforeſaid againſt him, becauſe he ſaith that the aforeſaid arbitrators, after the making of the writing aforeſaid, and on or before the ſaid 14th day of *Auguſt*, in the condition aforeſaid above ſpecified, made no award, order, arbitrament, final end or determination between the parties aforeſaid, of and upon the premiſſes in the condition aforeſaid mentioned, according to the form and effect of that condition; and this he is ready to verify: wherefore he prays judgment if the aforeſaid *William* ought to have his action aforeſaid thereof againſt him, &c.

No award.

And the aforeſaid *William Markes* ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action, becauſe he ſaith, that the aforeſaid arbitrators in the condition aforeſaid above-named, after the making of the writing obligatory aforeſaid, and before the ſaid 14th day of *Auguſt* in the ſaid condition mentioned, that is to ſay, on the 13th day of *Auguſt* in the ſeventh year of the reign of the ſaid lord the now king aboveſaid, taking upon themſelves the burthen of the arbitrament, order and determination aforeſaid of and upon the premiſſes in the ſaid condition above ſpecified, at *Haſlemere* aforeſaid in the ſaid county of *Surry*, made their certain award of and upon the ſame premiſſes, and thereby ordered and arbitrated between him the ſaid *William Markes* and the ſaid *Simon Marryott* of and upon the ſame premiſſes in form following, that is to ſay,

Replication. An award made.

That

That he the said *William Markes*, his executors, administrators or assigns, should pay or cause to be paid to the said *Simon Marryott*, his executors, administrators or assigns, at or in the then dwelling-house of *John Waterford*, bearing the sign of the *Eagle* in *Haslemere* aforesaid, the full sum of 31 *l.* 15 *s.* of lawful money of *England*, on or upon the 30th day of *September* then next following: which said sum the said arbitrators arbitrated and determined, should be in full satisfaction of all actions, suits, dues and demands from the said *William Markes* to the said *Simon Marryott*: and farther, the said arbitrators thereby ordered and arbitrated that the said *Simon Marryott*, his heirs or assigns, should deliver up, or caused to be delivered up, to the said *William Markes*, his heirs or assigns, upon the payment of the money aforesaid, upon the said 30th day of *September* then next following, quiet and peaceable possession of all those messuages or tenements, barns, lands, tenements and hereditaments, with the appurtenances, called or known by the name of *Clamerhill*, situate, lying and being in the parish of *Chiddingfold* in the county aforesaid; which said premisses then were in the possession of the aforesaid *Simon Marryott*, or his assigns, and an intailed deed of settlement bearing date the 12th day of *December* in the reign of king *James* the first, made of the premisses to the aforesaid *William Markes*, by the ancestors of him the said *William*, and all others the deeds and writings which he the said *Simon Marryott* had in his hands, custody or possession, which did belong to the aforesaid lands, or any other lands or tenements of the said *William Markes*, and also all bonds, assignments of bonds and judgments which he the said *Simon Marryott* had upon the said *William Markes*; and they the said arbitrators thereby further ordered and arbitrated that he the said *Simon Marryott* upon payment of the money to him as aforesaid, and upon request thereupon made, should seal and deliver as his deed to the aforesaid *William Markes*, or to his use, a general release of all actions, suits, dues and demands, from the beginning of the world until the twelfth day of the then instant *August*, and also a warrant of attorney to acknowledge satisfaction upon record in the courts of the lord the king at *Westminster*, upon all such judgments as he the said *Simon Marryott* had against the said *William Markes*. And also the said arbitrators thereby further ordered and arbitrated, that the aforesaid *William Markes*, upon the delivery of peaceable possession of all and singular the lands, tenements, deeds, writings, and of all and singular other the premisses to him as aforesaid, should seal and deliver as his deed to the said *Simon*, or to his use, a like general release of all actions, suits, dues and demands from the beginning

beginning of the world until the 12th day of the then instant *August* then past; of which said arbitrament the aforesaid *Simon* afterwards, to wit, on the aforesaid 14th day of *August* in the said condition mentioned, at *Haslemere* aforesaid, had notice: and the said *William Markes* saith, that he the said *William Markes*, after the making of the arbitrament aforesaid, to wit, on the said 30th day of *September* in the seventh year abovesaid, at the said dwelling-house of the said *John Waterford* in *Haslemere* aforesaid, for the space of six hours next before the sun-setting of the same day, and at the sun-setting of the same day was ready, and offered to pay to the said *Simon* the full sum aforesaid of 31 *l.* 15 *s.* of lawful money of *England*, which the arbitrators aforesaid arbitrated to be paid to him the said *Simon* by the said *William Markes*, upon the same day as aforesaid, according to the form and effect of the arbitrament aforesaid; and that neither the said *Simon*, nor any other person on the behalf of him the said *Simon*, then and there was ready to receive of the said *William Markes* the said 31 *l.* 15 *s.* and that the said *William* after the said 30th day of *September* hitherto hath been, and yet is ready to pay to the said *Simon* the said 31 *l.* 15 *s.* And further the said *William Markes* in fact saith, that the said *Simon* hath not delivered up, or caused to be delivered up to the aforesaid *William Markes*, upon the said 30th day of *September* in the year abovesaid, or at any time hitherto, quiet and peaceable possession of the messuage or tenement, barns, lands and hereditaments, with the appurtenances, called or known by the name of *Gamerhill*, situate in the said parish of *Chiddingfold*, according to the form and effect of the said arbitrament; and this he is ready to verify: wherefore he prays judgment and his debt aforesaid, together with his damages, by occasion of the detention of that debt, to be adjudged to him, &c.

Breach assigned.

Demurrer to the replication.

And the said *Simon* said that the plea aforesaid of the said *William* above pleaded in reply, and the matter in the same contained, are not sufficient in law for him the said *William* to have his said action to be maintained against him; and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient replication of him the said *William* in this behalf, he the said *Simon* prays judgment, and that the said *William* may be barred from his action aforesaid, &c.

Joinder in demurrer.

And the said *William Markes* since he hath above alledged in reply a sufficient plea and matter in law to maintain his said action against the said *Simon*, which he is ready to verify: which said plea, and the matter in the same contained, the

the ſaid *Simon* hath not denied, nor in any manner hath anſwered to it, but wholly refuſes to admit the averment aforeſaid, as before prays judgment, and his debt aforeſaid, together with his damages, by occaſion of the detention of that debt, to be adjudged to him, &c.

Eaſter *Term in the eighth Year of King* William *the Third.* C. B. Roll 579.

Searle *againſt* Darford. 1 Ld. Raym. 120.

Aſſault and battery.

Huntingdonſhire, (to wit, *JOHN Darford* late of *Comington* in the county aforeſaid, butcher, was attached to anſwer to *George Searle* of a plea, wherefore with force and arms upon him the ſaid *George* at *Hamerton* he made an aſſault, and beat, wounded and ill treated him, ſo that his life was deſpaired of, and other wrongs to him did, to the great damage of him the ſaid *George*, and againſt the peace of the lord the now king, &c. And whereupon the ſaid *George* by *Jonathan Nicols* his attorney complains, that the aforeſaid *John* on the 20th day of *October* in the [illegible] year of the reign of the lord the now king, with for[illegible] arms, &c. to wit, with ſwords, ſtaves and knives u[illegible]im the ſaid *George* at *Hamerton* aforeſaid made an aſſault, and beat, wounded and ill treated him, ſo that his life was deſpaired of, and other wrongs, &c. and againſt the peace, &c. and whereupon he ſaith that he is injured, and hath damage to the value of 40*l.* and thereupon he brings ſuit, &c.

Not guilty as to the force, &c. and wounding.

And the ſaid *John Darford* by *John Crane* his attorney comes and defends the force and injury when, &c. and as to the coming with force and arms, and alſo the wounding aforeſaid, ſaith, that he is in no wiſe guilty thereof, as the ſaid *George* above complains thereof againſt him; and of this he puts himſelf upon the country; and the ſaid *George* likewiſe. And as to the reſidue of the treſpaſs and aſſault above ſuppoſed to be done, he the ſaid *John* ſaith that the ſaid *George* ought not to have his ſaid action thereof againſt him, becauſe he ſaith that before the ſaid time when the ſaid treſpaſs and aſſault are ſuppoſed to be done, and at the ſame time when, &c. he the ſaid *John Darford* was and yet is lawfully poſſeſſed of one cloſe called *Little Ale*, with the appurtenances, in *Comington* in the county of *Huntingdon* aforeſaid; and that before the ſaid time when, &c. to wit, in the day and year aboveſaid in the declaration aforeſaid above ſpecified, the aforeſaid *George* of his own wrong, and againſt

Juſtification as to the reſidue in defence of his poſſeſſion in a cloſe in *Comington.*

the

the will of him the ſaid *John Darford*, into that cloſe, in and upon the poſſeſſion of him the ſaid *John* thereof entered, and with a certain waggon and certain horſes drawing that waggon through and over the ſaid cloſe would and endeavoured to paſs, ſubverting the ſoil of the ſaid cloſe, with the wheels of the ſaid waggon, and doing damage thereby to him the ſaid *John*; upon which he the ſaid *John Darford* at the ſaid time when, *&c.* came to the ſaid *George*, then being in the ſaid cloſe as aforeſaid, and then and there requeſted him the ſaid *George* that he would depart out of the ſaid cloſe, and not do any further damage in that cloſe; and the ſaid *George* would not depart out of the ſaid cloſe, and refuſed to depart, and would not further recede therefrom, wherefore he the ſaid *John* then and there gently laid his hands upon him the ſaid *George*, to cauſe him the ſaid *George* to depart from the cloſe aforeſaid, which is the ſame reſidue of the treſpaſs and aſſault aforeſaid whereof the ſaid *George* himſelf now above complains; without this, that the ſaid *John Darford* is gulty of the ſaid treſpaſs and aſſault at *Hamerton* aforeſaid, or any where elſe out of the ſaid cloſe in *Comington* aforeſaid; and this he is ready to verify: wherefore he prays judgment if the aforeſaid *George* ought to have his ſaid action thereof againſt him, *&c.*

Traverſe that he is guilty at *Hamerton.*

And [illegible] ſaid *George*, as to the ſaid reſidue of the treſpaſs and aſſault aforeſaid above as aforeſaid done, ſaith, that he, by any thing in the ſaid plea before alledged, ought not to be barred from having his ſaid action thereof, becauſe he ſaith, that the ſaid entry of him the ſaid *John* into the cloſe aforeſaid, with the waggon and horſes aforeſaid drawing that waggon, at the ſaid time when, *&c.* was in, by and through a certain way in the ſame cloſe * uſed and enjoyed by permiſſion; and that he the ſaid *George* was then and there in the ſame way, and not out of that way, with the waggon and horſes aforeſaid drawing that waggon, peaceably paſſing through, until the ſaid *John Darford*, moved by a ſudden paſſion, then and there, to wit, the day and year aboveſaid in the declaration aforeſaid above ſpecified, of his own wrong upon him the ſaid *George* in the ſaid cloſe at *Comington* aforeſaid made an aſſault, and him the ſaid *George* with a certain great ſtick then and there violently and vehemently ſtruck upon his head, and with divers ſtrokes beat and ill treated him, ſo that his life was deſpaired of, which is the ſame reſidue of the treſpaſs and aſſault whereof he

Replication.

* *Nota*; The entry is in theſe words, *Ex permiſſione uſitat' & gravis'*; but *Quære*, whether it was not a way by preſcription, as the report ſays it was.

above

Traverse after a traverse.

above complains; without this, that the said *John Darford* then and there gently laid his hands upon him the said *George*, as the said *John* in pleading thereof hath alledged; and this he is ready to verify: wherefore since the said *John* hath acknowledged the residue of the trespass and assault aforesaid, he the said *George* prays judgment and his damages, by occasion of the residue of the same trespass and assault aforesaid, to be adjudged to him, *&c.*

Demurrer.

And the said *John* saith, that the said plea of the said *George* above pleaded in reply, and the matter in the same contained, are not sufficient in law for him the said *George* to have his said action to be maintained against him the said *John*; and that he, to that plea in manner and form aforesaid pleaded, hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of him the said *George* in this behalf, he the said *John* as before prays judgment, and that the aforesaid *George* may be barred from having his said action against him the said *John*, *&c.* And for cause of this demurrer in law, he the said *John* sheweth to the court here, and saith, that the said plea or replication of the said *George* is double or triple, to wit, in justifying (although insufficient) the entry of him the said *George* into the close of him the said *John* aforesaid, and also in assigning another assault and beating than he the said *John* hath above alledged, and also in traversing the assault and beating by him the said *John* above acknowledged; and also for that the traverse aforesaid is wholly superfluous and redundant, and the said replication is uncertain, and wants form.

Cause of demurrer.

Joinder in demurrer.

And the said *George* since he sufficient matter in law to have his said action to be maintained against the said *John* hath above in reply alledged, which he is ready to verify, which said matter the said *John* hath not denied, nor in any manner answered it, as before prays judgment and his damages, by occasion of the said residue of the trespass and assault aforesaid, to be adjudged to him, *&c.* And because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties aforesaid here until in eight days of the Holy *Trinity*, to hear their judgment thereupon, for that the said justices are not thereupon yet, *&c.*

Curia advisare vult.

Trinity

Trinity *Term in the eighth Year of King* William *the Third.* Roll 1606.

Nevill *against* Peckham. 1 Ld. Raym. 121.

Cooke.

Sussex, (to wit) *WILLIAM Peckham* late of *Rumboldsweek* in the county aforesaid, gent. and *John Peckham* late of *Rumboldsweek* aforesaid in the county aforesaid, gent. were attached to answer to *Stephen Nevill* of a plea, wherefore with force and arms the close of him the said *Stephen Nevill*, at the parish of *Rumboldsweek*, they broke and entered, and his grass to the value of 20 *s.* there lately growing with their feet in walking they trod down and consumed, and other his grass to the value of 40 *s.* there lately growing with certain cattle they depastured, trod down and consumed; and also the sheep of him the said *Stephen* of the price of 20 *l.* there lately found, without a reasonable cause, they chased, took and impounded, and the same there so impounded, against the law and custom of *England*, they for a long time detained, whereby those sheep were very much worse: and also him the said *Stephen* from the quiet possession and occupation of his close aforesaid (they falsly claiming right and title in the same close) disturbed and hindered, and other wrongs to him did, to the great damage of him the said *Stephen*, and against the peace of the lord the now king, &c. And whereupon the said *Stephen* by *John Wakeford* his attorney complains that the said *William* and *John Peckham* on the 14th day of *December* in the 7th year of the reign of the lord *William* the third, now king of *England*, &c. with force and arms, &c. the close of him the said *Stephen*, called *Hurnethill*, at the parish of *Rumboldsweek*, they broke and entered, and his grass to the value, &c. there lately growing with their feet in walking trod down and consumed, and other his grass to the value, &c. there lately growing with certain cattle, to wit, with horses, oxen, cows, swine and sheep they depastured, trod down and consumed; and also the sheep, to wit, 27 sheep of him the said *Stephen*, of the price, &c. there lately found, without reasonable cause, they chased, took and impounded, and the same there so impounded, against the law and custom of *England*, they for a long time, to wit, for the space of 20 hours then next following detained, whereby the said sheep were very much worse; and also him the said *Stephen* from

Trespass for breaking plaintiff's close called *Hurnethill* in the parish of *Rumboldsweek*, treading down the grass, depasturing the grass, and for chasing, taking and impounding plaintiff's sheep.

the quiet possession and occupation of his close aforesaid (they falsly claiming right and title in the same close) disturbed and hindered, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon he saith that he is injured and hath damage to the value of 20*l*. and thereupon he brings suit, &c.

Plea. One pleads by attorney, the other by his guardian.

And the said *William* by *Thomas Peckham* his attorney, and the said *John Peckham* by *Thomas Peckham*, who is admitted by the court here to defend for the same *John* who is within age, as the guardian of him the said *John*, come and defend the force and injury when, &c. and as to the coming with force and arms, and also the whole trespass aforesaid, except the chasing, taking and impounding of the sheep aforesaid, say that they are in no wise guilty thereof; and of this they put themselves upon the country; and the said *Stephen* likewise: and as to the chasing, taking and impounding of the sheep aforesaid above supposed to be done, they the said *William* and *John Peckham* say, that the said *Stephen* ought not to have his said action thereof against them, because they say that before the said time when the said trespass is supposed to be done, and also at the same time when, &c. the said *William* was seised in his demesne as of fee of and in a certain close of land called the *New Orchard* in *Rumboldsweek* aforesaid: and because the said sheep at the said time when, &c. were in the said close called the *New Orchard*, feeding on the grass there then growing, and doing damage there, he the said *William* in his own right, and the said *John Peckham* as the servant of him the said *William*, and by his command, at the said time when, &c. took the sheep aforesaid in the said close called the *New Orchard*, feeding on the grass then there growing, and doing damage there in the name of a distress, and impounding them in a pound overt at *Rumboldsweek* aforesaid, and detained the said sheep in the pound overt aforesaid, as it was well lawful for them to do; without this, that the said *William* and *John Peckham* chased, took and impounded the said sheep in the said close called *Hurnethill*, as the said *Stephen* above complains against them; and this they are ready to verify: wherefore they pray judgment if the said *Stephen* ought to have his said action against them, &c.

Not guilty to all the trespass, except the chasing and impounding.

And as to *that*, defendants justify for *damage-feasant* in the *New Orchard*.

And traverse the place in the declaration.

Demurrer.

And the said *Stephen* saith, that the said plea of the said *William* and *John Peckham*, as to the chasing, taking and impounding of the said sheep above pleaded in bar, and the matter in the same contained, are not sufficient in law to bar him the said *Stephen* from having his action aforesaid against the said *William* and *John Peckham*, and that he to

that

that plea in manner and form aforesaid pleaded hath no necessity, nor is bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of them the said *William* and *John Peckham* in this behalf, he the said *Stephen* prays judgment and his damages, by the occasion aforesaid, to be adjudged to him, *&c.* And for cause of demurrer in law upon the said plea, the said *Stephen*, according to the form of the statute in such case made and provided, sheweth to the court here the causes following, that is to say, that the said plea is uncertain, and wants form; and the said *William* traverses matter in that plea which is not traversable.

Cause of demurrer.

Joinder in demurrer.

Michaelmas *Term in the eighth Year of King* William *the Third.* Roll 325. or 326.

Allen *against* Harris. 1 Ld. Raym. 122.

Winford.

Trover for a silk waistcoat.

Kent, (to wit) WILLIAM *Harris* late of *Nockholt* in the county aforesaid, yeoman, was attached to answer to *John Allen* the younger, of a plea of trespass upon the case, *&c.* And whereupon the said *John* by *Henry Streatfield* his attorney complains, that whereas the said *John* on the first day of *December* in the 7th year of the reign of the lord the now king, at *Chiddingstone* in the county aforesaid, was possessed of a silk waistcoat to the value of 5 *l.* as of his own proper goods and chattels; and being so possessed thereof, casually lost the goods and chattels aforesaid out of his hands and possession; which said goods and chattels afterwards, to wit, the day and year abovesaid at *Chiddingstone* aforesaid, came to the hands and possession of him the said *William*, by finding: nevertheless the said *William* knowing the goods and chattels aforesaid to be the goods and chattels of the said *John*, and to him the said *John* of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John* of the goods and chattels aforesaid, hath not delivered the goods and chattels aforesaid (although often requested) to him the said *John*, but afterwards, to wit, on the first day of *January* in the 7th year of the reign of the said lord the now king at *Chiddingstone* aforesaid con-

verted and disposed of the goods and chattels aforesaid to his own proper use, to the damage of him the said *John* of ten pounds; and thereupon he brings suit, &c.

Plea in bar.

And the said *William* by *Edward Godfoll* his attorney comes and defends the force and injury when, &c. and saith, that the said *John* ought not to have his said action against him, because he saith, that well and true it is that he the said *William* hath converted and disposed of the said silk waistcoat to the proper use of him the said *William*, in manner and form as the said *John* by his said declaration against him above supposes: but the said *William* further saith, that after the said time when the conversion of the silk waistcoat aforesaid is above supposed to be done, to wit, on the 10th day of *January* in the 7th year of the reign of the said lord the now king at *Chiddingstone* aforesaid, in consideration that he the said *William*, at the special instance and request of him the said *John*, then and there assumed, upon himself, and to the said *John* faithfully promised to pay to the aforesaid *John* twenty shillings of lawful money of *England*, when he should be thereunto requested, for the said silk waistcoat, and in full satisfaction and discharge of the charge aforesaid, he the said *John* did then and there discharge and acquit him the said *William* of the silk waistcoat aforesaid, and of the conversion aforesaid, and of all actions and demands whatsoever of and concerning the silk waistcoat aforesaid, and the conversion of the same silk waistcoat; and this he is ready to verify: wherefore he prays judgment if the said *John* ought to have his said action against him.

Confesses the conversion.

But pleads that the plaintiff did discharge and acquit him in consideration of a promise made by him to pay plaintiff 20*s*.

Demurrer.

Joinder in demurrer.

Hicks *against* Woodeson. 1 Ld. Raym. 137. B. R.

Prohibition to the spiritual court, as to tithes.

Somersetshire, (to wit.) NICHOLAS *Hicks* who sues as well for the lord the king and lady the queen as for himself in this behalf, complains of *Samuel Woodeson*, clerk, rector of the parish church of *Huntspill*, in the county of *Somerset* aforesaid, in the custody of the marshal of the *Marshalsea*, of the lord the king and lady the queen, being before the king and queen themselves, of a plea wherefore he sued in the court christian against the royal prohibition to him before directed and delivered to the contrary thereof, for that, (to wit,) That whereas the parish of *Huntspill* in the county aforesaid is an ancient parish, and whereas the said *Nicholas* for the space of five years now last past, and more, hath been and as yet is an inhabitant within the parish aforesaid,

ſaid, and for the whole time aforeſaid hath had and occupied forty acres of land, meadow and paſture, with the appurtenances, being parcel of the manor of *Huntſpill* in the ſaid county of *Somerſet* within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh. And alſo whereas there are had, and from time whereof the memory of man is not to the contrary, there have been had within the ſame pariſh and the bounds, limits and titheable places of the ſaid pariſh, theſe cuſtoms and modus's of tithing, of and concerning the tithes of lambs following, brought forth and forthcoming within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; and of and concerning the tithes of milch cows and heifers kept and depaſtured within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; and of and concerning the tithes of calves falling, brought forth and forthcoming within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; and of and concerning the tithes of colts falling, brought forth and forthcoming within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; and of and concerning the tithes of hay growing, renewing and forthcoming within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; and of and concerning the tithes of gardens and orchards, being within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; and of and concerning the payment of the offerings of all the men and their wives inhabiting within the pariſh aforeſaid, and the bounds, limits and titheable places of the ſame pariſh; that is to ſay, that every occupier of any lands or tenements within the ſaid pariſh, and the bounds, limits and titheable places of the ſame pariſh, who hath in any year kept any milch cow or heifer, or any milch cows, or heifers within the pariſh aforeſaid, and the bounds, limits and titheable places thereof, hath paid and for all the time aforeſaid hath been uſed and accuſtomed to pay to the rector of the pariſh church of *Huntſpill* aforeſaid, or to his farmer or deputy of the rectory for the time being, for every ſuch milch cow three pence, of lawful money of *England*, and for every ſuch milch heifer one penny and an halfpenny, of like lawful money in every ſuch year, and no more, for all the tithes of milk of the ſame cows and heifers in the ſame year; and that every ſuch occupier as aforeſaid, who in any year hath had any lamb or any lambs under the number of ſeven lambs brought forth and forthcoming within the ſaid pariſh, and the bounds, limits and titheable places thereof, hath paid, and for all the

the time abovesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or to his farmer or deputy of that rectory for the time being, in the same year one halfpenny of the like lawful money for every such lamb so under the number of seven lambs brought forth and forthcoming, in full satisfaction, payment and content of all tithes of those lambs: but if the same occupier in any such year hath had within the parish aforesaid, and the bounds, limits and titheable places thereof, any lambs to the full number of seven lambs brought forth and forthcoming, then the same occupier hath rendered and delivered, and for all the time abovesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same seven lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same seven lambs, and for the number of seventeen lambs two lambs, and for every calf one halfpenny if less than seven calves, and if above seven, then one calf, and two calves for seventeen calves, and one penny for every colt, and two pence for every acre of hay, and two pence for every garden and orchard, and for every man of the age of sixteen years two pence, and for a wife two pence, for oblations. And also whereas the hundred of *Huntspill* and *Puriton* within the aforesaid county of *Somerset* is, and from time whereof the memory of man is not to the contrary, hath been an ancient hundred, within which said hundred the said parish of *Huntspill* is, and from time whereof the memory of man is not to the contrary, hath been. And whereas within the same hundred of *Huntspill* and *Puriton* there is, and for all the time abovesaid there hath been, a certain antient custom for all the time abovesaid used and approved, that all the inhabitants within the hundred aforesaid, occupying any lands, meadow or pasture within the hundred aforesaid, have been free, exempt and discharged, and from time to time for all the time abovesaid ought to be free, exempt and discharged of and from the payment of any tithes of or for the depasturing of any cattle not employed to plough or pail, by them depastured in any lands, meadow or pasture, being within the hundred of *Huntspill* and *Puriton* aforesaid, to wit, at the hundred aforesaid. And whereas the said *Nicholas* for the space of seven years next before the exhibiting the bill of the said *Nicholas* in the court here, hath been, and as yet is, an inhabitant within the hundred aforesaid, and within the said parish of *Huntspill*, and for all the same time of seven years aforesaid, did possess and occupy divers lands, meadow and pasture within the hundred and parish aforesaid, and hath depastured upon

upon the ſame lands, meadow and paſtures, and not elſewhere, within the ſame time divers cattle not employed to plough or pail, that is to ſay, cows, heifers and colts: nevertheleſs the ſaid *Samuel* well knowing the premiſſes, but contriving and maliciouſly intending unjuſtly to aggrieve and oppreſs him the ſaid *Nicholas*, againſt the due form of law, and againſt the form and effect of the ſaid modus's of tithing, and the cuſtom aforeſaid, and unjuſtly to violate the cuſtoms and preſcriptions of thoſe modus's of tithing, and alſo to diſherit the ſaid lord the now king and lady the now queen, and their crown, and to draw the conuſance of a plea which belongs and appertains to the ſaid lord the king and lady the queen, their royal crown and dignity, to another trial, hath drawn him the ſaid *Nicholas* into plea, before the venerable man *Richard Heley*, doctor of laws, ſurrogate of the venerable man *Edwin Sandys*, clerk, archdeacon of the archdeaconry of *Wells*, lawfully conſtituted ſurrogate, or the lawful deputy of the ſaid archdeaconry, or ſome other competent judge in this behalf, of and for the ſubſtraction and non-payment of the tithes of lambs fallen, brought forth and forthcoming within the ſaid pariſh, and the bounds, limits and titheable places thereof, in the years of our Lord 1689, 1690, &c. and alſo in the months of *March*, *April*, *May*, and *June*, in the year of our Lord 1693, now current, or in every one or ſome of the ſame months and years, and of and for the ſubſtraction and non-payment of the tithes of calves within the pariſh aforeſaid, and the bounds, limits and titheable places thereof, (ſo for colts, cows, heifers, hay, gardens and orchards, *mutatis mutandis*) and of and for the ſubſtraction and non-payment of offerings of all the men and their wives inhabiting within the ſaid pariſh, and the bounds, limits, and titheable places thereof, in the years and months aboveſaid, or in every one or ſome of them, by craftily and ſubtilly libelling in the ſame court chriſtian, againſt the ſaid *Nicholas Hicks*, in and by a certain libel and a certain ſchedule to the ſame libel ſubſcribed or annexed, againſt him the ſaid *Nicholas Hicks* in the ſaid court chriſtian exhibited, under the form following, that is to ſay, firſt of all, that the ſaid maſter *Samuel Woodeſon* in the years of our Lord 1689, 1690, &c. to wit, in the months paſt in the ſame reſpectively concurring, and alſo in the months of *March*, *April*, &c. in the year of our Lord 1693, now current, or in every one or ſome of the ſaid months and years hath been and was rector of the pariſh church of *Huntſpill* aforeſaid, and of all and ſingular the tithes, eccleſiaſtical rights and emoluments to the ſame rectory belonging and appertaining, and the ſaid rectory, with all its rights, members and appurtenances rightly,

lawfully, &c. canonically hath got and obtained, and the same so obtained, with all its rights and appurtenances, hath possessed and had, as he hath at this present time, (except as within written) and for the true rector and lawful possessor of the same hath been for the time aforesaid, and also at present is commonly called, held, esteemed, named and reputed, openly, publickly and notoriously; he propoundeth nevertheless, &c. And he propoundeth jointly and severally of every item, which as well of common right of this renowned kingdom of *England*, as from antient and laudable and lawful prescriptive custom, from time and through time, the beginning whereof the memory of man is not to the contrary, hitherto hath been inviolably and unshakenly used and observed, and against gainsayers hath often obtained in judgment, or at least once the right of perceiving, receiving and having all and singular the tithes as well greater as lesser, mixt and minute whatsoever, and the rest of the rights and emoluments of the church whatsoever in the schedule to these presents annexed, contained and specified within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places of the same wheresoever, whensoever, howsoever, and as often as forthcoming growing, renewing and happening to any rector there whatsoever for the time being, or his farmers, and to the said master *Samuel Woodeson*, clerk, the present rector there, hath belonged and appertained, doth belong and appertain, ought to belong and appertain, and doth and shall appertain and belong; and propoundeth as above. Also, that for 10, 20, 30, 40, 50, and 60 years last past, more or less, and also from time and through time, the beginning whereof the memory of man is not to the contrary, the rector of the said rectory of the parish church of *Huntspill* aforesaid, for their respective times successively being, and the said master *Samuel Woodeson*, clerk, the present rector there, or his predecessors, and all and every of his predecessors in successive times in the same being, in the same have been, as they ought to have been, in the quiet and peaceable possession, or as of right to perceive and have all and singular the tithes aforesaid, and have received and had them by themselves, or their predecessors, and of and upon the same have freely and fully disposed, and so it hath been and ought to be, and so the said master *Samuel Woodeson*, clerk, the rector aforesaid, hath perceived, received and had for the whole, and all the time of his incumbency in the same, in right, and in the name of his rectory, until and unto the time of the grass within written: and he propoundeth as above. Also the said *Nicholas Hicks* in the years and months abovesaid, or in one or some of them, all and singular the titheable things, fruits, rights and emoluments in the present schedule annexed,

annexed, contained and specified, within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places thereof, forthcoming, growing, renewing and happening, as in the same schedule is declared, and they are drawn out, (which said schedule the party propounding will have to be accounted as if here inserted and read, as far as it may be expedient for him, and not otherwise, or in any other manner) hath had, holden, possessed, received, and to his own proper use converted and applied; and the party proponent propounded of every other number of things respectively titheable, and of the tithes in the schedule to these presents as above set forth annexed respectively contained and specified, more or less, and also such and such number, quality and quantity, as by lawful proofs or confession of the party in the event of this suit more fully shall come to be proved; and he propoundeth as above. Also that the true value or estimate of every titheable thing and things respectively titheable in the schedule aforesaid to these presents as before is set forth annexed, contained and specified as of the tithes or tenth part thereof to the sums or respective values in the same schedule mentioned in the months and years abovesaid, or in one or some of them, in the common estimation of men manifestly did extend, and do extend; and the party proponent propoundeth of every other sum or value of the things respectively titheable, and of the tithes, more or less, and also of such and so much money or value, quality and quantity, as by lawful proofs in the event of this suit more fully shall come to be proved; and he propoundeth as above. Also that the said *Nicholas Hicks* to pay, give and deliver to the before-named *Samuel Woodeson*, the rector aforesaid, or to his lawful deputy in this behalf, all and singular the tithes aforesaid, so as before set forth accustomed to be paid, and especially the tithes and ecclesiastical rights and emoluments aforesaid in the schedule to these presents (so as before is set forth) annexed, mentioned and specified, or otherwise, to compound duly with the said rector for the same, or with his lawful deputy, hath oftentimes, at least once, been properly and lawfully requested and importuned, who being so requested and importuned did not take care to do the premisses or any of them, nor at present doth take any care, but hath with-holden and refused to pay, but at least (more properly) with-holds and defers at present, to the great peril of his soul, and no small prejudice and grievance of the said master *Samuel Woodeson*, the rector aforesaid; and he propoundeth as above. Also that the said *Nicholas Hicks* hath been, and is an inhabitant of the said parish of *Huntspill*, manifestly under and subject to the diocese and jurisdiction of *Bath and Wells*; and he propoundeth

poundeth as above. Also that all and singular the premisses were and are true, notorious, public, manifest, and in like manner famous, and the public voice and fame have laboured of and concerning the same, as at present they labour; whereupon having given the assurance required by law in this behalf, the party of the said master *Samuel Woodeson*, the rector aforesaid, pays right and justice, and his complement thereof to be done and administered to him with effect, &c. In which said schedule annexed to the said libel as aforesaid, are contained the words following, (that is to say) first of all, that in the years and months aforesaid, all, some or one of them, upon the tenements, estate and lands which he the said *Nicholas Hicks* had held, possessed and enjoyed in the said parish of *Huntspill* and titheable places thereof, there was kept feeding and depasturing twenty ewe sheep, and of them there was yearly fallen twenty lambs, each lamb worth three shillings, and the tithe after that rate. Also that the said *Nicholas Hicks* in the months and years aforesaid, all, some or one of them, within the said parish of *Huntspill* and titheable places thereof, had and kept feeding and depasturing yearly four cows and four heifers, and for the milk of each cow he is to pay three pence, and of every heifer three half-pence, according to the custom of the said parish. Also that the said *Nicholas Hicks* of the said cows and heifers above mentioned had fallen yearly six calves, which he bred up for the pail, for each he is to pay one halfpenny, according to the custom of the said parish. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the parish of *Huntspill* and titheable places thereof, had held and possessed 20 acres of meadow, which he mowed, or caused to be mowed, yearly, for each acre of which there is yearly due, and he ought to pay to the rector of *Huntspill* aforesaid, for and in lieu of tithe-hay, two pence, according to the custom of the said parish. Also that the said *Nicholas Hicks* the months and years aforesaid all, some or one of them, within the said parish of *Huntspill* aforesaid, had and possessed one garden and two orchards yearly, for which there is yearly due, and he ought to pay to the rector of *Huntspill* aforesaid, three pence, according to the custom of the said parish, to wit, one penny for his garden and each orchard. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the parish of *Huntspill* and titheable places thereof, had and kept feeding and depasturing ten colts above one year old, which he sold away before they were used to the plough, the feeding and depasturing of each colt the months and years aforesaid, being monthly worth 4 *s.* and the tithe after that rate, and also had and kept feeding and depasturing the months and years

years aforesaid, all, some or one of them, in the said parish ten cows, ten heifers, ten steers and ten oxen, from the time he bought them to the time he sold them off they were never employed to the plough or pail, the herbage and depasturing of each of the said cows, heifers, steers and oxen, being monthly worth 4 *s.* and the tithes after that rate. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, in the said parish of *Huntspill* and titheable places thereof, had and kept four mares, and of them had fallen and received four colts yearly, for the fall of each, he is, and ought to pay to the rector of *Huntspill* aforesaid one penny, according to the custom of the said parish. Also that the said *Nicholas Hicks* hath the months aforesaid, all, or some or one of them, dwelt in the said parish of *Huntspill*, and he and his wife have received, or at least ought to have received, the holy sacrament of the Lord's Supper at their own parish church, for whose offerings he is yearly to pay to the rector at *Easter*, or thereabouts, 4 *d.* yearly, to wit, 2 *d.* for each. Also that the said *Nicaolas Hicks* the months and years aforesaid, all, some or one of them, within the said parish and titheable places thereof, had kept and bred up forty head of cattle, which he sold before they came to the plough or pail, the herbage and depasturing of each of the same being monthly worth 40 *s.* and the tithe after that rate. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, within the said parish of *Huntspill* and titheable places thereof, had and kept 6 cows, 6 heifers, 6 steers and 6 oxen, after they had been turned off from plough and pail, the feeding and depasturing whereof until they were fat, and looked on as such, and then sold off, from the grass and herbage and depasturing of the said cows, heifers, steers and oxen, being monthly worth 5 *s.* and the tithe after that rate. Also that the said *Nicholas Hicks* the months and years aforesaid, all, some or one of them, had and kept feeding and depasturing 8 cows and heifers, and of them had fallen and received 8 calves yearly, each calf at 7 weeks old (which is the customary time for the tithe calf) being worth 10 *s.* and the tithes after that rate, as by a copy of the libel and schedule aforesaid, brought here into court and read, among other things more fully appears: and him the said *Nicholas Hicks* in the said court christian before the said spiritual judge, by occasion of the premisses, hath unjustly bound to appear and answer to the said *Samuel Woodeson* of and upon the premisses: and although he the said *Nicholas Hicks* in every year of the years aforesaid wherein he the said *Nicholas* had any lambs, calves or colts, any milch cows or heifers, any hay, any gardens or orchards within the parish aforesaid, and the bounds, limits and titheable places thereof, being, growing, renewing

or

or forthcoming, or hath dwelt within the parish aforesaid, hath been always ready and offered, and yet is still ready to pay to the said *Samuel* the said several sums of money for the tithes of lambs, calves, colts, milch cows and heifers, hay, gardens and orchards, and for the oblations aforesaid, according to the form and effect of the several modus's of tithing aforesaid: and although he the said *Nicholas* all and singular the premisses aforesaid hath pleaded and alledged in his discharge of payment of the tithes by the said *Samuel* demanded in the said court christian before the said spiritual judge, and hath often offered to prove the same by unavoidable testimony, yet the said spiritual judge hath absolutely refused to admit or receive that plea, allegation and proof; and the said *Richard Heley* with all his power endeavours and daily contrives to condemn the said *Nicholas*, by the definitive sentence of the said court christian of and upon the premisses in the libel and schedule aforesaid contained, and to compel him to pay the tithes aforesaid in form aforesaid demanded, in contempt of the said lord the now king and lady the now queen, their crown and dignity, and to the great damage, prejudice and manifest impoverishing of him the said *Nicholas Hicks*, and against the due form of law and prescription and customs and modus's of tithing aforesaid: and although the said *Nicholas Hicks* on the last day of *August* in the 5th year of the reign of the said lord *William* and lady *Mary*, now king and queen of *England*, &c. at *Huntspill* aforesaid in the county aforesaid, the writ of the said lord the king and lady the queen of prohibition to the contrary to him the said *Samuel Woodeson* delivered: nevertheless the said *Samuel Woodeson* hath not ceased to prosecute the said plea against the said *Nicholas*, but hath further prosecuted that plea in the said court christian, (notwithstanding the said writ of prohibition) in contempt of the said now lord the king and lady the queen, and contrary to the prohibition aforesaid; whereupon the said *Nicholas*, who sues as well for the said lord the king and lady the queen in this behalf, as for himself, &c. says, that he is injured, and hath damage to the value of 200*l.* and thereupon as well for the lord the king and lady the queen as for himself he brings suit, &c.

Defendant imparls.

And now at this day, to wit, *Friday* next after the morrow of the holy *Trinity* in this same term, until which day the said *Samuel Woodeson* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king and lady the queen at *Westminster* come as well the said *Nicholas*, who sues as well, &c. by his attorney aforesaid, as the said *Samuel Woodeson* by *Giles Clarke* his attorney; and the said

Samuel defends the force and injury when, &c. and all contempt and whatsoever, &c. and saith, that he hath not prosecuted the plea aforesaid against the said *Nicholas* in the court christian after the prohibition of the said lord the king and lady the queen, to him thereupon delivered, as the said *Nicholas*, who sues as well, &c. above supposes; and of this he puts himself upon the country, and the said *Nicholas*, who sues as well, &c. thereof, likewise: but for having a writ of the lord the king and lady the queen of consultation as to the tithes of lambs, for which the said *Samuel* hath drawn into plea the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Samuel* saith, that the said *Nicholas* in the months and years in the declaration aforesaid specified, had, kept and depastured upon his lands and tenements within the parish of *Huntspill* aforesaid twenty ewe sheep, and of them had twenty lambs yearly, every one of them of the value of 3 *s.* for the tithes of which said lambs to the same *Samuel*, as rector of the parish church aforesaid, due and payable, he the said *Samuel* drew into plea him the said *Nicholas* in the court christian aforesaid before the said spiritual judge, before the prosecuting of the said writ of prohibition, as it was lawful for him to do; without this, that within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places of that parish, there is had, and from time whereof the memory of man is not to the contrary, there hath been had, such a custom and modus of tithing of and concerning the tithes of lambs there falling, brought forth and forthcoming, to wit, that every occupier of any lands or tenements within the said parish, and the bounds, limits and titheable places of the same parish, who in any year hath had any lamb or lambs under the number of 7 lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, and hath paid, and for all the time abovesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or to his farmers or deputy of that rectory for the time being, in the same year, one halfpenny of the like lawful money of *England*, for every such lamb so under the number of 7 lambs brought forth and forthcoming, in full satisfaction, payment and content of all tithes of those lambs; but if the same occupier in any such year hath had within the parish aforesaid, and the bounds, limits and titheable places thereof, any lambs to the full number of 7 lambs brought forth and forthcoming, then the same occupier hath rendered and delivered, and for all the time abovesaid hath been used and accustomed to render and deliver to the rector of the

Plea.

As to the tithe of lambs.

Defendant traverses the *Modus*.

the parish church of *Huntspill* aforesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same 7 lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same 7 lambs: and if the same occupier in any one year hath had any lambs to the full number of seventeen lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, then the same occupier hath rendered and delivered, and for all the time abovesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or his farmers or deputy of the said rectory for the time being, two lambs of the same seventeen lambs in every such year, for the tithes of the same 17 lambs, as the said *Nicholas* thereof above complains; and this he is ready to verify: wherefore he prays judgment, and a writ of the said lord the king and lady the queen of consultation, as to the tithes of lambs aforesaid, to be granted to him in this behalf, &c. And for having a consultation as to the tithes of calves aforesaid, for which the said *Samuel* hath drawn into plea the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Samuel* saith, that the said *Nicholas* in the months and years aforesaid had kept and depastured upon his lands and tenements within the parish aforesaid 16 cows and heifers, and of them had 14 calves yearly fallen, brought forth and forthcoming, each of the same calves of the value of ten shillings, for the tithes of which said calves to the same *Samuel*, as rector of the parish church aforesaid, due and payable, he the said *Samuel* drew into plea him the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, before the prosecuting of the said writ of prohibition, as it was lawful for him to do; without this, that within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places thereof, there is had, and from time whereof the memory of man is not to the contrary, there hath been had, a custom that every occupier of any lands or tenements within the parish aforesaid, and the bounds, limits and titheable places of the same parish, who had any calf or any calves under the number of 7 calves in any year brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, and hath paid, and for all the time aforesaid hath used and been accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or his farmers or deputy of that rectory for the time being, in every such year one halfpenny,

The like for calves.

Traverse as to calves, &c.

penny, of the like lawful money for each of the ſaid calves, in full ſatisfaction, payment and content of all the tithes of thoſe calves; but if the ſame occupier (as before in the traverſe as to lambs). And for having a conſultation as to tithes for depaſturing of colts, cows, ſteers, heifers and oxen not employed to plough or pail, and alſo other unfruitful cattle within the pariſh aforeſaid depaſtured, for which he the ſaid *Samuel* hath drawn into plea the ſaid *Nicholas* in the court chriſtian aforeſaid, before the ſaid ſpiritual judge, he the ſaid *Samuel* ſaith, that the ſaid *Nicholas* in every year of the years aforeſaid had, kept and depaſtured upon his lands and tenements aforeſaid within the pariſh aforeſaid, colts, cows, heifers and oxen, not employed to the plough or pail, and other unfruitful cattle in the declaration aforeſaid mentioned, for the tithes of depaſturing of which ſaid cattle to him the ſaid *Samuel*, as rector of the pariſh church aforeſaid, due and payable, he the ſaid *Samuel* drew into plea him the ſaid *Nicholas* in the court chriſtian aforeſaid, before the ſaid ſpiritual judge, before the proſecuting of the ſaid writ of prohibition, as before is ſet forth, as it was lawful for him to do; without this, that within the ſaid hundred of *Huntſpill* and *Puriton* there is, and for all the time aboveſaid there hath been an ancient cuſtom for all the time aboveſaid uſed and approved, that all the inhabitants within the hundred aforeſaid occupying any lands, meadow or paſture within the hundred aforeſaid have been free, exempt and diſcharged, and from time to time for all the time aboveſaid ought to be free, exempt and diſcharged of and from the payment of any tithes of or for the depaſturing of any cattle not employed to plough or pail, by them depaſtured in any lands, meadow or paſture, being within the hundred of *Huntſpill* and *Puriton* aforeſaid, as the ſaid *Nicholas* above complains; and this he is ready to verify: wherefore he prays judgment, and the writ of the ſaid lord the king and lady the queen of conſultation, as to the tithes for the depaſturing of cattle not employed to plough or pail, and of other unfruitful cattle, for which the ſaid *Samuel* hath drawn into plea him the ſaid *Nicholas* in the court chriſtian aforeſaid, as before is ſet forth in this behalf, to be granted to him, &c. And for having the writ of the ſaid lord the king and lady the queen of conſultation as to the offerings aforeſaid, the tithes of milch cows and heifers aforeſaid, the tithes of hay aforeſaid, the tithes of gardens and orchards aforeſaid, and the ſaid tithes of the ſaid four colts in the pariſh aforeſaid yearly fallen, for which he

And ſo alſo for all the other matters.

Traverſe as to cuſtom in the hundred in *non decimando*.

Demurrer to part.

he the said *Samuel* hath drawn into plea him the said *Nicholas* in the court christian aforesaid; the said *Samuel* prays judgment of the declaration aforesaid, because he saith, that the said declaration, and the matter in the same contained, are not sufficient in law to compel him the said *Samuel* to answer to that declaration, as to the same oblations and tithes; to which the said *Samuel* hath no necessity, nor is bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient declaration in this behalf, he the said *Samuel* prays judgment of the declaration aforesaid, and that the said declaration as to the said oblations and tithes may be quashed, and that the writ of the said lord the king and lady the queen may be thereupon granted to him, &c.

Replication.

And the said *Nicholas* saith, that by any thing by the said *Samuel* above in pleading alledged, he the said *Samuel* ought not to have the writ of the said lord the king and lady the queen of consultation: because as to the said plea of the said *Samuel* in manner and form above pleaded, as to the tithes of lambs, for which the said *Samuel* hath drawn into plea him the said *Nicholas* in the court christian aforesaid, before the said spiritual judge, he the said *Nicholas* as before saith, that within the parish of *Huntspill* aforesaid, and the bounds, limits and titheable places of that parish, there is had, and from time whereof the memory of man is not to the contrary, there hath been had such a custom and modus of tithing, of and concerning the tithes of lambs there falling, brought forth and forthcoming, to wit, that every occupier of any lands or tenements within the said parish, and the bounds, limits and titheable places of the same parish, who in any year hath had any lamb or lambs under the number of 7 lambs, brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, hath paid and for all the time abovesaid hath been used and accustomed to pay to the rector of the parish church of *Huntspill* aforesaid, or to his farmers or deputy of that rectory for the time being, in the same year, one halfpenny of the like lawful money of *England*, for every such lamb so under the number of 7 lambs brought forth and forthcoming, in full satisfaction, payment and content of all tithes of those lambs: but if the same occupier in any such year hath had within the parish aforesaid, and the bounds, limits and titheable places thereof, any lambs to the full number of 7 lambs brought forth and forthcoming, then the same occupier hath rendered and delivered, and for all the time abovesaid hath been used

Takes issue on the traverse of the *modus* as to lambs.

used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or to his farmer or deputy of that rectory for the time being, one lamb of the same 7 lambs in such year, in full satisfaction, payment and content, and in the name and place of the tithes of the same 7 lambs; and if the same occupier in any one year hath had any lambs to the full number of 17 lambs brought forth and forthcoming within the said parish, and the bounds, limits and titheable places thereof, then the same occupier hath rendered and delivered, and for all the time abovesaid hath been used and accustomed to render and deliver to the rector of the parish church of *Huntspill* aforesaid, or his farmer or deputy of the said rectory for the time being, two lambs of the same 17 lambs, as the said *Nicholas* above thereof complains; and this he prays may be inquired of by the country, and the said *Samuel* likewise, *&c.*

The like replications and issues joined upon the other traverses, as to the modus for calves, and as to the custom alledged in *non decimando* in the hundred of *Huntspill.* And a joinder in demurrer as to the rest.

Pleas before the Lord the King at Westminster *of the Term of Saint* Michael *in the eighth Year of the Reign of the Lord* William, *now King of* England, &c. Roll 123.

Chamberline *against* Harvey. 1 Ld. Raym. 146.

Count in trespass for a negro slave.

London, (to wit) BE it remembered, that on *Wednesday* next after three weeks of Saint *Michael* in this same term, before the lord the king at *Westminster* came *Willoughby Chamberline*, esq; by *Godfrey Woodward* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Robert Harvey*, esq; in custody of the marshal, *&c.* of a plea of trespass; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, to wit, *London*, to wit, *Willoughby Chamberline*, esq; complains of *Robert Harvey*, esq; in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that the said *Robert* on the first day of *September* in the year of our Lord 1695, with force and arms, one

negro of him the said *William*, of the price of 100*l.* of lawful money of *England*, at *London* aforesaid, to wit, in the parish of the *Blessed Mary of the Arches* in the ward of *Cheape*, took and led away from him, and then and there detained and kept possession of the negro aforesaid from the said first day of *September* until the exhibiting of this bill, so that he the said *Willoughby* totally was without, and lost the use and benefit of the said negro for the whole time aforesaid, and other wrongs to the said *Willoughby* then and there did, against the peace of the said lord the now king, to the damage of him the said *Willoughby* of 150*l.* and thereupon he brings suit, &c.

Not guilty.

And the said *Robert* by *Robert Stone* his attorney comes and defends the force and injury when, &c. and saith, that he is not thereof guilty in manner and form as the said *Willoughby* above complains against him; and of this he puts himself upon the country, and the said *Willoughby* thereupon likewise: therefore let a jury thereupon come before the lord the king at *Westminster* on *Thursday* next after the morrow of *All Souls*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process thereupon is continued between the parties aforesaid in the plea aforesaid, by the jury being respited thereupon between them, before the lord the king at *Westminster* until *Thursday* next after fifteen days of Saint *Martin*, unless the lord the king's trusty and well-beloved *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king himself, shall before come on *Wednesday* next after 15 days of Saint *Martin* at *Guildhall*, *London*, by form of the statute, for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Willoughby* by his said attorney, and the said chief justice before whom, &c. hath sent here his record before him had in these words: Afterward on the day and at the place within contained, before *John Holt*, knt. chief justice of the lord the king, assigned to hold pleas in the court of the said lord the king before the king himself, come as well the within named *Willoughby Chamberline*, esq; as the within written *Robert Harvey*, esq; by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Thomas Sericole*, *Richard Martin*, *Samuel Stone*, *Benjamin Hodgson*, *Jeremiah Burratt* and *Nathaniel Spinlow* came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, by the sheriffs of

Nisi prius.

Postea

Tales de circumstantibus.

2 London

London aforesaid, being chosen to this, at the request of the said *Willoughby Chamberline*, and by the command of the chief justice aforesaid newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case made and provided; and the jurors so newly appointed, to wit, *Thomas Pool*, *Richard Martin*, *Thomas Ward*, *John Watson*, *Philip Brewster* and *Richard Chauncey* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that one *Edward Chamberline* long before the within written time when, &c. was seised of a certain plantation in the island of *Barbadoes* in the *West-Indies* in parts beyond the seas in his demesne as of fee, and of certain negro slaves, being slaves belonging and appertaining to the same plantation; and the aforesaid negro slave, long before the within written time when, &c. was born within the island aforesaid of negro parents, slaves belonging and appertaining to the same plantation; and that long before the within written time when, &c. to wit, on the 29th day of *April* in the year of our Lord 1668, by one *William Willoughby*, deputy governor, council and assembly, being the representatives of that island in that behalf lawfully authorized and commissioned at the island aforesaid, it was enacted in these *English* words following, *Barbadoes*, An act declaring the negro slaves of this island to be real estates: whereas a very considerable part of the wealth of this island consists in our negro slaves, without whose labour and service we shall be utterly unable to manage our plantations here, thereby relieving our wants, and bringing that considerable increase of revenue which this place affords to his majesty's coffers, as well here as in *England*; and whereas some law-suits have arisen, and other great inconveniencies have followed, where divers persons dying intestate have left their right and interest of their negro slaves to be by law disputed between their heirs, executors and administrators, wherein the various judgments and affections of several courts or jurors have sometimes found for one, and at other times for the other; for a full remedy of these inconveniencies, and to the intent that the heirs and widow who claim dower may not have bare lands without negroes to manure the same, and also that the condition, right and interest of negroes, to all other ends and purposes may be fully known and determined, the deputy governors, council and assembly, being willing that all ambiguities herein should be re-

Special verdict.

moved, and the law in this case be declared and put in a certainty, have ordained and enacted by the deputy governor, council and assembly, and by the authority of the same, that from and after publication hereof, all negro slaves in all courts of judicature, and other places within this island, shall be held, taken and adjudged to be estates real, and not chattels, and shall descend unto the heir or widow of any person dying, according to the manner and custom of lands of inheritance held in fee-simple; provided always, that no person selling or alienating any of his or her negroes, is hereby held or obliged to cause such sale or alienation to be inrolled, as is accustomed to be done and required by the laws of this island, as in all other real estates; any usage, custom or law to the contrary notwithstanding. Provided this act, or any thing therein contained, shall not be taken and deemed to extend unto any merchant, factor or agent, bringing negro slaves to this island, and having the consignments of any slaves under them, but that in all respects they, their executors, administrators or assigns, may hold, possess and enjoy such slaves or negroes in such condition as they might have done before the making of this act, until sale of such slave or slaves hath been made in the island, as by that act more fully appears. And that the said *Edward Chamberline* long before the said time when, *&c.* at the island aforesaid died seised of his like estate of and in the plantation and negro slaves aforesaid thereunto belonging; by and after whose death, one third part of the plantation and negro slaves aforesaid, whereof, the negro in the declaration aforesaid mentioned was one, descended to *Mary*, the widow and relict of the said *Edward Chamberline*, in the name of her dower, by the laws of the island aforesaid; and the reversion of the said third part descended to the said *William Chamberline*, as the son and heir of the said *Edward*; and being so seised, the said *Mary* afterwards and long before the time when, *&c.* took for her husband one *John Witham*, knt. by which, the said *John Witham* was seised in right of his said wife of one third part of the plantation and negro slaves for the term of the life of his said wife; and the said *John Witham* being so seised, the within named negro, a true native, long before the within written time when, *&c.* to wit, in the 36th year of the reign of *Charles* the second, late king of *England*, brought within this kingdom of *England*, and afterwards, the said negro slave above-mentioned remained in the service of him the said *John* within this kingdom of *England* for the space of divers years, from that time and before the said time when, *&c.* according to the

rites

rites of the church of *England*, but without the knowledge or consent of the said *Willoughby Chamberline*, there was baptized; and that the said *John Witham* afterwards, and after the death of his said wife, but long before the said time when, &c. within this kingdom of *England* absolutely put the said negro slave out of his service; and also afterwards and before the said time when, &c. the said negro slave served other subjects of this kingdom of *England*, and at the within written time when, &c. within this kingdom of *England* was retained in the actual service of the said *Robert Harvey*, to take of the said *Robert Harvey* according to the rate of six pounds by the year for his wages in that behalf: but whether upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, the said *Robert Harvey* be guilty of the trespass within specified or not, the jurors aforesaid are wholly ignorant, and pray the advice of the court here concerning the premisses; and if upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, it shall seem to the justices and the court here that the said *Robert Harvey* be guilty of that trespass, then the said jurors say upon their oath, that the said *Robert Harvey* is guilty of the trespass aforesaid, as the said *Willoughby Chamberline* within complains against him; and they assess the damages of him the said *Willoughby*, by occasion of the trespass aforesaid, besides his costs and charges, to fifty pounds; and for his costs and charges three shillings and four pence; and if upon the whole matter aforesaid, by the jury aforesaid in form aforesaid found, it shall seem to the same justices here that the said *Robert Harvey* be not guilty of the trespass aforesaid, then they the said jurors say upon their oath, that the said *Robert Harvey* is not guilty of the trespass aforesaid, as he the said *Robert* hath within in pleading alledged: and because the justices here are not yet advised, &c.

Hilary *Term in the seventh Year of King* William *the Third.* Roll 1684. C. B.

Kimp *against* Cruwes and Others. 1 Ld. Raym. 167.

Trespass for breaking plaintiff's close and taking 3 cows.

Devonshire, (to wit) HUMFREY *Cruwes* late of *Morchard Cruwys* in the county aforesaid, yeoman, *Joan Wood* late of the same, spinster, *William Parker* late of the same, husbandman, and *Thomas Wood* late of *Stockly Pomeroy* in the county aforesaid, husbandman, were attached to answer to *John Kimp* of a plea, wherefore with force and arms the close of him the said *John*, at the parish of *Morchard Cruwys* in the county aforesaid, they broke and entered, and the cattle of him the said *John* of the price of 15 *l.* at the parish of *Morchard Cruwys* aforesaid lately found they took, and those cattle unto a certain pound in the parish of *Witheridge* in the county aforesaid they drove and chased, and in that pound impounded, and those cattle in that pound there for a long time detained, and other wrongs to him did, to the great damage of him the said *John*, and against the peace of the lord the now king, &c. And whereupon the said *John* by *George Palmer* his attorney complains, that the said *Humfrey*, *Joan*, *William* and *Thomas*, on the ninth day of *October* in the 7th year of the reign of the lord the now king, with force and arms, &c. the close, to wit, one close called the *Broad Close* of him the said *John*, at the parish of *Morchard Cruwys* in the county aforesaid, they broke and entered, and the cattle, that is to say, three cows of him the said *John* of the price, &c. at *Morchard Cruwys* aforesaid lately found they took, and those cattle unto a certain pound in the parish of *Witheridge* in the county aforesaid they drove and chased, and in that pound impounded, and those cattle in that pound for a long time, to wit, for the space of forty and eight hours detained, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon he saith that he is injured, and hath damage to the value of 40 *l.* and thereupon he brings suit, &c.

One defendant pleads not guilty.

And the said *Humfrey*, *Joan*, *William* and *Thomas*, by *Nathaniel Rider* their attorney come and defend the force and injury when, &c. And the said *Joan* saith that she is not guilty of the trespass aforesaid, as the said *John* above complains against her; and of this she puts herself upon the country, and the said *John* likewise. And the said *Humfrey*, *William*

William and *Thomas*, as to the coming with force and arms, and alſo the breaking and entering of the cloſe aforeſaid, called *Broad Cloſe*, ſay, that they are not guilty thereof; and of this they put themſelves upon the country, and the ſaid *John Kimp* likewiſe. And as to all the reſidue of the treſpaſs aforeſaid above ſuppoſed to be done, they the ſaid *Humfrey*, *William* and *Thomas* ſay, that the ſaid *John Kimp* ought not to have his ſaid action thereof againſt them, becauſe they ſay, that the place in which they took the cattle aforeſaid in the declaration aforeſaid ſpecified is, and at the ſame time when, &c. was, three acres of meadow, called and known by the name of the *Buſhment Meadow*, lying in *Morchard Cruwys* aforeſaid, of which ſaid three acres of meadow, with the appurtenances, in which, &c. and alſo of certain cloſes of paſture called *Great Broad Park* and *Little Broad Park* in *Morchard Cruwys* aforeſaid, the ſaid *Humfrey* and one *Thomas Mocke* before the ſaid time when, &c. were poſſeſſed for a certain term of 15 years, which is yet unexpired; and being ſo poſſeſſed thereof, they the ſaid *Humfrey* and *Thomas* on the 4th day of *February* in the 6th year of the reign of the lord *William*, now king of *England*, &c. at *Morchard Cruwys* aforeſaid, demiſed to one *William Williams* the ſaid 3 acres of meadow, with the appurtenances, in which, &c. they the ſaid *Humfrey*, *William* and *Thomas*, the cattle aforeſaid as aforeſaid took, and the ſaid paſture called *Great Broad Park* and *Little Broad Park*, containing in the whole by eſtimation 20 acres, or thereabouts, or more or leſs, together with all ways, paths, hedges, banks, caſements and commodities whatſoever to the ſame ſeveral cloſes belonging or appertaining, except and always reſerved out of that demiſe to them the ſaid *Humfrey* and *Thomas Mocke*, their executors and adminiſtrators, all timber trees, ſaplings and trees likely to become timber, growing or increaſing in and upon the premiſſes; and alſo except the coppice and hedge thereunto belonging, and the wood there growing and increaſing with all the uſual ways and paths to the coppice aforeſaid, and one way through the *Broad Park* to a certain piece of land called the *Mildourne*, in, upon and over the before demiſed premiſſes, during the term to him the ſaid *William Williams* granted; to have and to hold the ſaid demiſed premiſſes, and every part and parcel thereof, (except as before excepted) to him the ſaid *William Williams*, his executors adminiſtrators and aſſigns, from and immediately after the 25th day of *March* then laſt paſt, for and during the full and whole term of nine years from thence next following, fully to be compleat and ended, he the ſaid *William Williams*, his

The others not guilty as to the *vi & armis* and breaking and entry.

And juſtify the taking the cows as a diſtreſs for rent.

his executors, administrators, and assigns, yielding and paying therefore yearly and every year to the said *Humfrey* and *Thomas Mocke*, their executors, administrators and assigns, the annual rent or sum of 7*l.* of lawful *English* money, at the four most usual feasts or days of payment in the year, that is to say, the nativity of St. *John* the baptist, St. *Michael* the archangel, the nativity of our Lord God, and the annunciation of the blessed lady the holy virgin *Mary*, by equal portions: by virtue of which said demise the said *William Williams* into the said demised premisses, with the appurtenances, whereof, &c. long before the said time when, &c. entered, and was and yet is thereof possessed for the term abovesaid, and three pounds and 10 *s.* of the rent aforesaid for half of an year, ended upon the feast of St. *Michael* the archangel, in the 7th year of the reign of the lord *William*, now king of *England*, &c. abovesaid, at the said time when, &c. were in arrear, and to the said *Humfrey* and *Thomas* are yet unpaid; wherefore the said *Humfrey*, in right of him the said *Humfrey*, and of the said *Thomas Mocke*, and the said *William* and *Thomas Wood*, as the servants of them the said *Humfrey* and *Thomas Mocke*, and by their command, into the said three acres of meadow in which, &c. at the said time when, &c. entered, and the cattle aforesaid in the declaration aforesaid above specified, in the name of a distress for the said rent as aforesaid being in arrear, in the same three acres of meadow called *Bushment Meadow*, at the said time when, &c. took, and those cattle unto the pound overt, at *Witheridge* aforesaid in the county of *Devon* aforesaid, at the said time when, &c. drove, and there in the pound overt impounded and detained for the space of time aforesaid in the said declaration above-mentioned, in the name of a distress for the rent so as aforesaid being in arrear, as it was lawful for them to do; and this they are ready to verify: wherefore they pray judgment if the said *John Kimp* ought to have his said action thereof against them, &c.

Replication that the cattle were not levant and couchant

And the said *John Kimp* as to the said residue of the trespass aforesaid saith, that he by any thing before alledged ought not to be barred from having his said action thereof, because protesting that the cattle aforesaid at the said time when, &c. were taken in the said close called the *Bread Close* in *Morchard Cruwys* aforesaid, in the said declaration above-mentioned: nevertheless for plea the said *John* saith, that the cattle aforesaid at the time of taking of the same cattle were not levant and couchant in and upon the said three acres of meadow, called *Bushment Meadow*; and this he is ready to verify: wherefore he prays judgment

and

and his damages for the residue of the trespass aforesaid, to be adjudged to him, &c.

And the said *Humfrey*, *William* and *Thomas* say, that the cattle aforesaid at the time of taking of the same cattle were levant and couchant in and upon the said three acres of meadow called *Bushment Meadow*; and of this they put themselves upon the country, and the said *John* likewise: therefore as well to try that issue, as the said other issues between the parties aforesaid above joined, the sheriff is commanded that he cause to come here in 8 days of the purification of the blessed *Mary*, twelve, &c. by whom, &c. and who neither, &c. to take cognizance, &c. because as well, &c. At which day the jury between the parties aforesaid of the plea aforesaid is thereupon respited between them here until this day, that is to say, from *Easter* day in 15 days then next following, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, by form of the statute, &c. on *Saturday* the 28th day of *March* next past, at the castle of *Exeter* in the county aforesaid, shall first come: and now here at this day comes the said *John* by his attorney aforesaid, and the said justices before whom at the assizes, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *Littleton Powis*, knt. one of the barons of the exchequer of the lord the king, and *Francis Swanton*, esq; to the said *Littleton Powis* and *John Holt*, knt. chief justice of the said lord the king, assigned to hold pleas before the king himself, justices of the said lord the king, assigned to take the assizes in the county of *Devon*, by form of the statute, &c. for this time associated, the presence of him the said *John Holt* not being expected, by virtue of the writ of the said lord the king of *Si non omnes*, &c. came the within named *John Kimp* by his attorney within contained, and the within named *Humfrey Cruwys*, *Joan Wood*, *William Parker* and *Thomas Wood*, although solemnly called came not, but made default: therefore the jury, whereof mention is within made, is taken against them by default; and the jurors of that jury being called, some of them, to wit, *John Partridge*, *Nicholas Crook*, *Benjamin Bidgood*, *Peter Hole*, *George Ayre*, *William Carr* and *William Vogures* came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers by the sheriff of the county aforesaid being chosen for this purpose, at the request of the said *John Kimp*, and by the command of the justices aforesaid newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, to wit, *Jonas Philips*, *William Avent*,

Rejoinder that they were, and issue joined.

Nisi prius.

Postea.

Tales.

Richard Parcey, *John Hooper* and *James Newton* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the other jurors aforesaid before impanelled for this purpose, as to the issue within written between the said *John Kimp* and the said *Joan Wood* within joined, say upon their oath, that the said *Joan* is guilty of the trespass within written, as the said *John* within thereof complains against her: and as to the first issue within written between the said *John Kimp* and the said *Humfrey Cruwys*, *William Parker* and *Thomas Wood* within joined, as to the coming with force and arms, and also the breaking and entering of the close within mentioned, called *Broad Close*, they say upon their oath, that the said *Humfrey Cruwys*, *William Parker* and *Thomas Wood* are thereof guilty, as the said *John Kimp* within thereof complains against them: and as to the other issue within written between the said *John Kimp* and the said *Humfrey Cruwys*, *William Parker* and *Thomas Wood* within likewise joined, the jurors aforesaid upon their said oath further say, that the cattle within mentioned, at the within written time of the taking of the said cattle, were not levant and couchant in and upon the within mentioned three acres of meadow called *Bushment Meadow*, as the said *John Kimp* within in pleading hath alledged; and they assess the damages of him the said *John Kimp*, by occasion of the trespass within specified, besides his costs and charges by him about his suit in this behalf laid out, to 40 *s.* and for those costs and charges to 40 *s.*

Verdict for the plaintiff on all the three issues.

Curia advisare vult.

And because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties aforesaid here until the morrow of the holy *Trinity*, to hear their judgment thereupon, for that the said justices here are not yet thereof, *&c.* At which day here come as well the said *John* as the said *Humfrey*, *Joan*, *William* and *Thomas*, by their attornies aforesaid: and because the justices here will further advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the parties aforesaid here until in three weeks from the day of Saint *Michael*, to hear their judgment thereupon, for that the said justices here are not yet thereof, *&c.* At which day here come as well the said *John* as the said *Humfrey*, *Joan*, *William* and *Thomas*, by their attornies aforesaid: and because the justices here will further advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the parties aforesaid here until in eight days of Saint *Hilary*, to hear their judgment thereupon, for that the said justices are not yet thereof, *&c.* At which day here

here come as well the said *John* as the said *Humfrey*, *Joan*, *William* and *Thomas*, by their attornies aforesaid: and upon this, the premisses being seen, and by the justices here fully understood, it is considered, that the said *John* do recover against the said *Humfrey*, *Joan*, *William* and *Thomas*, his damages aforesaid to 80 *s.* by the jury aforesaid, in form aforesaid assessed, and also eighteen pounds 16 *s.* 8 *d.* to the said *John* at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to 22 *l.* 16 *s.* and 8 *d.* &c.

Final judgment for plaintiff.

Easter *Term in the eighth Year of the Reign of King* William *the Third.* Roll 331.

Hoole *against* Bell, and Others. 1 Ld. Raym. 172.

Winford.

Yorkshire, (to wit) ROBERT *Bell* late of *Sheffield* in the county aforesaid, yeoman, *Godfrey Barnes* late of *Gleadleys*, in the county aforesaid, yeoman, *John Yelland* late of *Sheffield* aforesaid in the county aforesaid, yeoman, and *George Turner* late of *Sheffield* aforesaid in the county aforesaid, yeoman, were summoned to answer to *Mary Hoole*, widow, of a plea wherefore they took the cattle of her the said *Mary*, and unjustly detained them against gages and pledges, &c. And whereupon the said *Mary* by *John Dickson* her attorney complains, that the aforesaid *Robert Godfrey*, *John Yelland* and *George*, on the 11th day of *November* in the 7th year of the reign of the lord the now king, at *Tinsley*, in a certain place there called the *Stable*, took the cattle of her the said *Mary*, to wit, four horses, and unjustly detained them, against gages and pledges, until, &c. Whereupon she saith that she is injured, and hath damage to the value of 30 *l.* and thereupon she brings suit, &c.

Count in replevin.

And the aforesaid *Robert Bell*, *Godfrey Barnes*, *John Yelland* and *George Turner*, by *William Banks* their attorney, come and defend the force and injury when, &c. and as bailiffs of *Robert Knollys*, gent. executor of the will of *Francis Knollys*, esq; deceased, well acknowledge the taking of the cattle aforesaid, in the said place in which, &c. and justly, &c. because they say, that the same place in which the taking of the cattle aforesaid is supposed to be done contains,

Cognizance as bailiffs of an executor.

contains, and at the ſaid time when the taking of thoſe cattle is ſuppoſed to be done, did contain in itſelf one ſtable, with the appurtenances, in *Tinſley* aforeſaid, which ſaid ſtable, with the appurtenances, is, and at the ſaid time when, *&c.* and alſo from time whereof the memory of man is not to the contrary, hath been parcel of the manor of *Tinſley*, otherwiſe *Tinſlawe*, with the appurtenances, in the county aforeſaid; of which ſaid manor, with the appurtenances, whereof the ſaid place in which, *&c.* is, and at the ſaid time when, *&c.* was, and alſo for all the time aforeſaid hath been parcel, the right honourable *William* late earl of *Strafford* deceaſed, in his life-time long before the ſaid time when, *&c.* to wit, on the 23d day of *March* in the 29th year of the reign of the lord *Charles* the ſecond, late king of *England*, *&c.* (among other things) was ſeiſed in his demeſne as of fee; and being ſo ſeiſed thereof, the ſaid late earl afterwards in his life-time, and before the ſaid time when, *&c.* to wit, on the ſaid 26th day of *March* in the 29th year of the reign of the lord the late king aboveſaid, at *Tinſley* aforeſaid, by his certain writing indented, then and there made between the ſaid late earl, by the name of the right honourable *William* earl of *Strafford*, knight of the moſt noble order of the garter, and one of his majeſty's privy council, of the one part, and the ſaid *Francis Knollys* in his life-time, by the name of *Francis Knollys* of Saint *Paul's Covent Garden* in the county of *Middleſex*, eſq; of the other part; one part of which, ſealed with the ſeal of the ſaid late earl, the aforeſaid *Robert Bell*, *Godfrey*, *John* and *George* bring here into court, the date whereof is the ſame day and year, for and in conſideration of the good and faithful ſervice of the aforeſaid *Francis Knollys* then done, and then afterwards to be done and performed, for the ſaid late earl, and alſo of five ſhillings of good and lawful money of *England* to him the ſaid late earl then in hand paid, and for divers other good cauſes and conſiderations him thereunto moving, had given and granted, and by the ſame writing indented for himſelf and his heirs gave and granted to the ſaid *Francis Knollys* a certain annuity or yearly rent-charge of ſixty pounds of good and lawful money of *England*, to be iſſuing and payable out of all that manor or lordſhip of *Tinſley*, otherwiſe *Tinſlawe* aforeſaid, with all and ſingular its rights, members and appurtenances, in the aforeſaid county of *York*, and out of all and ſingular the meſſuages, cottages, lands, tenements and hereditaments whatſoever within the towns, villages, pariſhes, hamlets, precincts or territories of *Catcliffe*, *Whitbill*, *Orgrave* and *Bramford*, and every or any of them in the ſaid county of *York*, and out of all and ſingular the meſſuages,

Grant of a rent-charge.

suages, cottages, houses, edifices, buildings, barns, stables, orchards, gardens, lands, tenements, meadows, pastures, feedings, commons, common of pasture, moors, marshes, rents, reversions, services, profits, commodities, emoluments and hereditaments whatsoever, with the appurtenances, to the said manor or lordship belonging, or before used, taken, reputed, occupied or enjoyed as part or parcel thereof; to have, hold, and yearly to receive, perceive and take the said annuity or yearly rent-charge of 60*l.* to him the said *Francis Knollys* and his assigns, from and immediately after the date of the same writing, for and during the term of his natural life, to be paid at two feasts or days in the year, that is to say, at the feast of *Pentecost*, and the feast of Saint *Martin* the bishop in winter, by equal portions; the first payment to begin and be made upon the feast of *Pentecost* next ensuing the date of the same writing: and if it should happen that the said annuity or yearly rent-charge of 60*l.* or any part thereof, should be in arrear or unpaid in part or in the whole for the space of 20 days next after any of the said feasts in which it ought to be paid as aforesaid, being lawfully demanded, that then and in such case it should be lawful to and for the said *Francis Knollys*, or his assigns, into the said manor or lordship, lands, tenements, and hereditaments before mentioned, or into any part or parcel thereof, to enter and distrain for the said annuity or yearly rent-charge of 60*l.* or such part thereof as should happen to be in arrear and unpaid; and the distress or distresses then and there found, to take, lead, chase and carry away and impound, and impounded to detain and keep until he or they should be fully satisfied and paid the said annual rent and all arrearages thereof, if any should be, as by the said writing indented here brought into court (among other things) is more fully manifest and appears: by virtue of which said gift and grant the said *Francis Knollys* was seised of the aforesaid annuity or yearly rent of 60*l.* in his demesne as of freehold for the term of his life; and thereupon being so seised of the rent aforesaid, the said *Francis Knollys* afterwards and long before the said time when, &c. to wit, on the 15th day of *May* in the 6th year of the reign of the lord *William* the now king and lady *Mary* late queen of *England*, &c. at *Tinsley* aforesaid made his last will and testament in writing, and by the same will made and appointed the said *Robert Knollys* sole executor thereof; and afterwards and after the feast of *Pentecost* in the 6th year of the reign of the said lord the king and the late lady the queen abovesaid, and before the said time when, &c. to wit, on the tenth day of *July* in the same year at *Tinsley* aforesaid the said *Francis Knollys* died seised

Clause of distress.

seised of such his estate of and in the rent aforesaid; after whose death, and before the said time when, &c. to wit, on the 18th day of *July* in the 6th year abovesaid, at *Tinsley* aforesaid, the said *Robert Knollys* took upon himself the burthen of the execution of the will aforesaid, and proved the same will according to the ecclesiastical laws of this kingdom of *England*, and the said *Robert* was executor of the will aforesaid at the time when, &c. and always after the death of the said *Francis Knollys* hitherto hath been, and yet is so. And because 1020 *l.* of the rent aforesaid for 17 years, ending at the said feast of *Pentecost* in the 6th year abovesaid to the said *Francis Knollys* in his life-time, and to the said *Robert Knollys* after the death of him the said *Francis* for the space of 20 days next after that feast at the same time when, &c. were in arrear and unpaid, they the said *Robert Bell*, *Godfrey Barnes*, *John Yelland* and *George*, as bailiffs of the said *Robert Knollys*, executor of the said will of the said *Francis*, well acknowledge the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. in parcel of the lands and tenements aforesaid (as a distress of the said *Robert Knollys*, as executor of the said will of the said *Francis Knollys*, in form aforesaid, according to the form of the statute in such case made and provided) charged and bound for the said 1020 *l.* of the rent aforesaid so being in arrear; and the said *Robert Bell*, *Godfrey*, *John* and *George* bring here into court the letters testamentary of the said *Francis Knollys*, whereby it sufficiently appears to the court here that the said *Robert Knollys* is executor of the will aforesaid, and ought to have the administration, &c.

For rent in arrear due to the testator in his life-time, they acknowledge the taking of the cattle.

Demurrer.

And the said *Mary Hoole* saith, that the said cognizance of the aforesaid *Robert*, *Godfrey*, *John* and *George* above made, and the matter in the same contained, are not sufficient in law for them justly to acknowledge the taking of the cattle aforesaid in the said place in which, &c. and that she to that cognizance in manner and form aforesaid made, hath no necessity, nor is she bound by the law of the land to answer; and this she is ready to verify: wherefore for want of a sufficient cognizance in this behalf the aforesaid *Mary Hoole* prays judgment and her damages, by occasion of the taking and unjustly detaining the said cattle, to be adjudged to her, &c. And for cause of demurrer in law upon the said cognizance of the said *Mary*, according to the form of the statute in such case made and provided, shews, and to the court here demonstrates this cause following, to wit, for that it doth not appear by the said cognizance that the said 1020 *l.* were ever demanded, or that any part thereof was ever demanded, &c.

Cause of demurrer.

And

And the said *Robert Bell*, *Godfrey Barnes*, *John Yelland* and *George Turner*, since they sufficient matter in law in their said cognizance to acknowledge justly the taking of the cattle aforesaid in the said place in which, &c. have above alledged, which they are ready to prove; which said matter the said *Mary Hoole* hath not denied, nor in any manner answered to it, but that averment hath wholly refused to admit, pray judgment and a return of the cattle aforesaid, together with their damages, costs and charges by them about their suit in this behalf laid out, according to the form of the statute, to be adjudged to them, &c.

Michaelmas *Term in the ninth Year of King* William *the Third.* Roll 363.

Blackett *against* Crissop. 1 Ld. Raym. 278.

Tempest.

Northumberland, (to wit) CUTHBERT *Crissop* late of *Jordan* in the county aforesaid, yeoman, otherwise called *Cuthbert Crissop* of *Jordan* in the county of *Northumberland*, yeoman, was summoned to answer to *John Blackett*, esq; late sheriff of the county aforesaid, of a plea that he render to him 40 *l.* which he oweth to him and unjustly detains, &c. And whereupon the said *John* by *Stephen Hales* his attorney saith, that whereas the said *Cuthbert* on the 3d day of *September* in the 4th year of the reign of the lord the now king, and the lady *Mary* the second, late queen of *England*, &c. at *Hexham*, by his certain writing obligatory acknowledged himself to be held to the said *John*, then being sheriff of the county aforesaid, by the name of *John Blackett*, esq; sheriff of the county aforesaid, in the said 40 *l.* to be paid to him the said *John*, when he should be thereunto requested: nevertheless the said *Cuthbert*, although often requested, hath not yet rendered the said 40 *l.* to the said *John*, but to render the same to him hath hitherto denied, and yet doth deny, whereupon he saith that he is injured, and hath damage to the value of 10 *l.* and thereupon he brings suit, &c. And he brings here into court the writing aforesaid, which testifies the debt in form aforesaid, the date whereof is the day and year aforesaid, &c.

Debt on a replevin bond.

And the said *Cuthbert* by *William Carr* his attorney comes and defends the force and injury when, &c. and prays *oyer* of the writing aforesaid, and it is read to him, &c. He also prays

Defendant craves *oyer* of the bond.

The condition.

prays *oyer* of the condition of the same writing, and it is read to him in these words: The condition of this obligation is such, that if the above bounden *Cuthbert-Crissop* do appear at the next county court to be holden at *Alnewicke*, and then and there do prosecute his action with effect against *William Radcliffe* for wrongful taking and detaining of his cattle, to wit, two oxen, as is alledged, and do make return thereof, if return shall be adjudged by law, and also do save and keep harmless the said sheriff, his under-sheriff and bailiffs, for, touching and concerning the delivery of his said cattle, then this obligation to be void, or else to be in force; which being read and heard, he the said *Cuthbert* saith, that he ought not to be charged with the debt aforesaid, by virtue of the said writing, because he saith, that at the time of the making of the said writing the cattle aforesaid in the condition aforesaid above specified, upon the complaint of him the said *Cuthbert*, were replevied and delivered to him the said *Cuthbert* by the said late sheriff in his bailiwick, to wit, at *Hexham* aforesaid; and that at and upon such delivery of those cattle, as before is set forth, the writing aforesaid, with the condition aforesaid, was required and taken by the said late sheriff, by colour of his said office of sheriff, and by pretence of the statute set forth in the parliament of the lord *Edward* the first, formerly king of *England*, holden at *Westminster* in the county of *Middlesex* in the 13th year of his reign; which said condition above recited is not such as, but other than by that statute is appointed and ordained in such case to be taken and to be made, the same condition in itself containing the said clause or matter of saving and keeping harmless the said sheriff, his under-sheriff and bailiffs, for, touching and concerning the delivery of the said cattle; which said matter ought not to be contained in the said condition, by the form of that statute, by which the writing aforesaid is void and of no effect in law; and this he is ready to verify: wherefore he prays judgment if he ought to be charged with the debt aforesaid, by virtue of the said writing, &c.

Plea that the bond was given to the plaintiff upon a replevin made, &c. by pretext of the Stat. 13 *Ed. 1.*

And that it is not warranted by that statute, because it is to indemnify the sheriff, &c.

Demurrer.

Joinder in demurrer.

Trinity

Trinity *Term in the 7th Year of King* William *the Third.* Roll 187.

Britton *against* Cole. 1 Ld. Raym. 305.

Gloucestershire, (to wit) *JOHN Britton* complains of *Thomas Cole* in the custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that he on the 20th day of *March* in the 7th year of the reign of the lord *William* the third, now king of *England, &c.* at *Hannam* in the parish of *Bitton* in the county aforesaid, with force and arms the cattle, that is to say, 43 sheep and two lambs of him the said *John Britton* of the price of sixteen pounds took and drove away, and other wrongs to him did, against the peace of the said lord the now king, to the damage of him the said *John* of 40*l.* and thereupon he brings suit, *&c.*

Trespass.

And now here at this day, to wit, *Friday* next after three weeks of the Holy *Trinity* in this same term, until which day the said *Thomas* had leave to imparl to the bill aforesaid, and then to answer, *&c.* before the lord the king at *Westminster* come as well the said *John* by his said attorney as the said *Thomas* by *Philip Hodges* his attorney, and the said *Thomas* defends the force and injury when, *&c.* and as to the coming with force and arms, and whatsoever that is against the peace of the said lord the now king, saith that he is not guilty; and of this he puts himself upon the country, and the said *John Britton* likewise: and as to the residue of the trespass aforesaid above supposed to be done, he the said *Thomas Cole* saith, that the said *John Britton* ought not to have or maintain his said action thereof against him, because he saith, that before the said time when the trespass aforesaid is above supposed to be done, to wit, on the 12th day of *February* in the 6th year of the reign of the said lord the now king, a certain writ of the said lord the now king of *Levari facias*, issued out of the court of exchequer of him the said lord the king at *Westminster*, then being in the county of *Middlesex*, directed to the sheriff of *Gloucestershire*; by which said writ the said lord the king reciting, that whereas *Richard Cocks*, bart. then late sheriff of *Gloucestershire* aforesaid, by virtue of the writ of him the said lord the king of *Capias Utlagatum*, issuing out of the court of the said lord the king of common bench at *Westminster* against *Francis Creswick* of *Hannam's Court* within the parish of *Bitton* in the county aforesaid,

Special justification under a *levari facias* grounded on an outlawry certified into the court of exchequer.

esq; outlawed in the county of *Somerset* on the 12th day of *June* in the 5th year of the reign of the lord the king and of the lady *Mary* late queen of *England*, &c. at the suit of *Thomas Cole* the now defendant, and *Mary* his wife, of a plea of debt, to the aforesaid late sheriff directed, on the 28th day of *September* in the 5th year abovesaid, took and seized into the hands of the said lord the king and lady the queen one capital messuage or tenement called *Hannam's Court*, with all the barns, stables, out-houses, edifices, gardens, orchards and appurtenances to the same belonging, one close of pasture commonly called *Hill-house*, containing by estimation 14 acres; one other close of pasture called the *New Enclosure*, containing by estimation eight acres, (and several other grounds) all and singular which premisses aforesaid, with the appurtenances, were of the clear yearly value of 54 *l.* in all their issues beyond reprises, of the lands and chattels of the said *Francis Creswick* as by the transcript of the said writ of *Capias Utlagatum*, and the return thereof, and of a certain inquisition thereupon taken, certified into the exchequer of the lord the now king and there in the custody of the said lord the king remaining, more fully appears: the aforesaid lord the king willing to be answered and satisfied of the rents, issues and premisses aforesaid, (as is right) commanded the said sheriff of *Gloucestershire* by the said writ of *Levari facias*, that he should not omit, because of any liberty, but that he should enter into the same, and should cause to be made, collected and levied, all and singular the rents, issues and profits of the premisses aforesaid, with the appurtenances, and of every parcel thereof forthcoming, from the said time of taking thereof into the hands of the said lord the king, until the feast of the annunciation of the blessed virgin *Mary* then next to come, (which was not thereof answered to the said lord the king) for the proportion of time, and according to the rate and yearly value above-mentioned, so that when he should have levied that money, he should have the same before the barons of the exchequer of the said lord the king at *Westminster* from *Easter* day in one month then next to come in the court of the lord the king then there, to be paid to the use of him the said lord the king, and that he should have there then that writ: by virtue of which said writ of *Levari facias*, *Nathaniel Rider*, esq; then and yet being sheriff of *Gloucestershire* aforesaid, after the issuing of the same writ, to wit, on the 7th day of *March* in the 7th year of the reign of the said lord the now king, at *Bitton* aforesaid, made his warrant in writing under the seal of the office of him the said sheriff, directed to all the bailiffs, tythingmen, and

and other officers of the same county, and also to *Anthony Powell*, *John Cooke*, *John Okes* and *Joseph Powell* his bailiffs; by which the said sheriff commanded the said bailiffs and other officers aforesaid, that they should cause to be made, collected and levied, all and singular the rents, issues and profits of the premisses aforesaid, in the writ aforesaid above-mentioned, with the appurtenances, and of every parcel thereof forthcoming, from the said time of taking thereof into the hands of the said lord the now king, until the feast of the annunciation of the blessed virgin *Mary* then next to come, for the proportion of time, and according to the rate and yearly value above-mentioned, so that the said *Nathaniel Rider* the said sheriff might have the same before the barons of the exchequer of the said lord the king at *Westminster* from *Easter* day in one month then next to come in the court of the said lord the king then there, to be paid to the use of him the said lord the king, according to the command of the writ aforesaid. And the said *Thomas Cole* further saith, that the said capital messuage or tenement called *Hannam's Court*, the said several closes and parcels of pasture and the rest of the premisses in the writ of *Levari facias* aforesaid mentioned, at the time of the issuing out of the same writ at the several times of pronouncing the said outlawry, and of issuing out the said writ of *Capias Utlagatum* recited in the said writ of *Levari facias*, were and yet are lying and being in *Hannam* aforesaid, within the said parish of *Bitton* in the county of *Gloucester* aforesaid; and because the said 43 sheep and two lambs, after the issuing out of the said writ of *Levari facias*, and the making of the said warrant, and before the said feast of the annunciation of the blessed virgin *Mary*, to wit, at the said time when, &c. were in the said close of pasture called *Hill-house* in *Hannam* in the parish of *Bitton* aforesaid, being parcel of the premisses aforesaid in the said writ of *Levari facias* before mentioned, there feeding levant and couchant, he the said *Thomas Cole* then and there requested the said *Anthony Powell*, and *John Powell* to take and drive away the said 43 sheep and two lambs, to make of the issues and profits aforesaid, according to the command of the said writ of *Levari facias* to the said sheriff directed, and the warrant aforesaid made by the sheriff; whereupon the said *Anthony Powell* and *John Powell* the sheep and lambs aforesaid at the said time when, &c. at *Hannam* in the parish of *Bitton* aforesaid took and drove away, which are the same residue of the trespass aforesaid whereof the said *John Britton* above complains against him the said *Thomas Cole*; and this he is ready to verify: wherefore he prays judgment if the said *John Britton*

 ought

ought to have or maintain his said action thereof against him, &c.

Demurrer and
Joinder in demurrer.

Pleas before the Lord the King at Westminster *of the Term of the Holy* Trinity *in the ninth Year of the Reign of* William, *now King of* England, &c. Roll 45.

Vinkestone *against* Ebden. 1 Ld. Raym. 384.

City of *York*, (to wit) BE it remembered, that heretofore, to wit, in the term of *Easter* last past before the lord the king at *Westminster* came *Hubert Vinkestone* by *Geoffry Vibergh* his attorney, and brought here into the court of the said lord the king then there his certain bill against *James Ebden* in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit: City of *York*, to wit, *Hubert Vinkestone* complains of *James Ebden* in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas the said *Hubert* the last day of *August* in the 7th year of the reign of the lord *William*, now king of *England*, &c. was possessed of one anchor, and six sail cloths and 3 cable ropes, of the value of 10*l.* of lawful money of *England*, as of his own proper goods and chattels; and the said *Hubert* being so possessed thereof, afterwards, to wit, the same day and year at the city of *York* aforesaid casually lost the said goods and chattels out of his hands and possession; which said goods and chattels afterwards, to wit, the first day of *October* in the 7th year abovesaid, at the city of *York* aforesaid, came to the hands and possession of the said *James*, by finding: nevertheless the said *James* knowing the goods and chattels aforesaid to be the proper goods and chattels of him the said *Hubert*, and of right to belong and appertain to him, yet contriving craftily and subtilly to deceive and defraud him the said *Hubert* of the goods and chattels aforesaid, hath not delivered the said goods and chattels to the said *Hubert*, altho' afterwards, to wit, the same day and year last-mentioned, at the city of *York* aforesaid, he was requested by him the said *Hubert*, but afterwards, to wit, the same day and year last-mentioned,

Count in trover for an anchor, sails and 3 cables.

mentioned, at the city of *York* aforesaid, converted and disposed of the goods and chattels aforesaid to his own proper use, to the damage of him the said *Hubert* of 50 *l.* and thereupon he brings suit, *&c.*

Imparlance.

And now here at this day, to wit, *Wednesday* next after three weeks of Saint *Michael* in this same term, until which day the said *James* had leave to imparl to the bill aforesaid, and then to answer, *&c.* come as well the said *Hubert Vinkestone* by his attorney aforesaid, as the aforesaid *James Ebden* by *Henry Clarebrough* his attorney, and the said *James* defends the force and injury when, *&c.* and saith that he is not thereof guilty; and of this he puts himself upon the country, and the aforesaid *Hubert* likewise, *&c.* Therefore let a jury come before the lord the king at *Westminster*, on *Wednesday* next after eight days of the purification of the blessed virgin *Mary*; and who neither, *&c.* to recognize, *&c.* because as well, *&c.* the same day is given to the parties aforesaid there, *&c.* at which day the jury between the parties aforesaid of the plea aforesaid was thereupon respited between them here until *Wednesday* next after fifteen days of *Easter* then next following, unless the justices of the said lord the king, assigned to take the assizes in the city aforesaid, by form of the statute, *&c.* on *Wednesday* the 11th day of *March*, at the *Guildhall* of the city of *York* aforesaid, shall first come. And now here at this day come as well the aforesaid *Hubert Vinkestone* as the aforesaid *James Ebden* by their attornies aforesaid, and the aforesaid justices before whom, *&c.* have sent here their record in these words, (to wit) Afterwards on the day and at the place within contained, before *John Turton*, knt. one of the barons of the exchequer of the lord the king, and *Thomas Hæsletyne*, esq; to the same *John Turton* and *Edward Nevill*, knt. one of the justices of the said lord the king of the bench, assigned to take the assizes in the county of the city of *York*, by form of the statute, *&c.* being associated for this turn, by virtue of the writ of the said lord the king of *Si non omnes*, *&c.* came as well the within named *Hubert Vinkestone* as the within written *James Ebden* by their attornies within contained; and the jury, whereof mention is within made, being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, say upon their oath, that the aforesaid *Hubert* within mentioned, at the time within written in the declaration within mentioned, was possessed of the goods and chattels in the declaration of him the said *Hubert* within specified, as of his own proper goods and chattels. And the said jurors upon their oath further say, that the town of *Newcastle upon Tine*

Not guilty.

Nisi prius.

Special verdict.

Tine is an antient town, and that the port of *Newcastle upon Tine* is an antient port, under the care, conservation and government of the mayor and burgesses of that town; that by the custom within the same town, from time whereof the memory of man is not to the contrary, the mayor and burgesses of the said town, at their own proper costs and charges have been used and accustomed, and are obliged to repair and cleanse the port, and to render it convenient for the safe and secure navigation and remaining of the ships there; and that in consideration thereof the mayor and burgesses of the town aforesaid, for all the time abovesaid have had and received, and have been used and accustomed, and ought to have and receive, a duty or toll of five pence by the chaldron for all coals exported from the port aforesaid, or put and loaded in or upon any ship with an intention to be exported, and that the officer called the water-bailiff of the said town of *Newcastle* for the time being, or his deputy, from the time abovesaid hath distrained, and hath been used and accustomed to distrain any goods and chattels whatsoever distrainable by law of any person's whatsoever exporting or loading upon a ship to be exported, the goods and merchandizes aforesaid, and refusing to pay the duty or toll aforesaid, for non-payment of the said duty or toll. And the jurors aforesaid upon their oath further say, that the aforesaid *Hubert* before the said time within specified in the declaration within written, loaded a certain ship of him the said *Hubert*, called the *William and Thomas* of *Lyme*, with fifty chaldrons of coals of the value of 27 *l.* and 10 *s.* within the port of *Newcastle* aforesaid, with an intention to export those coals from the said port. And the said jurors upon their said oath further say, that the aforesaid *James*, at the said time when, &c. within mentioned in the declaration within written, and long before, was the officer of the said town and port called the water-bailiff, constituted in due manner by the mayor and burgesses aforesaid; and the same *James* finding the ship aforesaid loaded with the said coals as aforesaid ready to be exported, asked and demanded of the said *Hubert* the said duty or toll for the said coals, and the said *Hubert* absolutely refused to pay the said duty or toll, and thereupon the said *James*, for and in the name of a distress, took and yet detains the goods and chattels within mentioned in the declaration within written, being part or parcel of the tackle belonging to the said ship, for the non-payment of the said duty or toll. And the said jurors upon their said oath further say, that the goods and chattels within mentioned in the declaration within written, at the time of the taking thereof were worth 7 *l.* and 10 *s.* But whether

whether upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found the said goods and chattels are in such case distrainable by the law of the land, or not, the jurors aforesaid are wholly ignorant, and thereupon pray the advice and consideration of the court here: and if upon the whole matter aforesaid, in form aforesaid found, it shall seem to the court here that they are not distrainable in such case, then the said jurors say upon their said oath, that the said *James* is guilty of the premisses within laid to his charge, in manner and form as the aforesaid *Hubert* within thereof complains against him; and then they assess the damages of him the said *Hubert*, by the occasion within written, besides his costs and charges by him laid out about his suit in this behalf to 7 *l.* 10 *s.* and for those costs and charges to 40 *s.* but if upon the whole matter aforesaid, by the said jury in form aforesaid found, it shall seem to the court here that the said goods and chattels are distrainable by law in such case, then the jurors aforesaid upon their said oath further say, that the aforesaid *James* is not guilty of the premisses within laid to his charge, as he the said *James* within by pleading for himself hath alledged: and because the court of the said lord the king now here are not yet advised, &c.

Trin. 10 W. 3. Roll 1659.

Lawrence *against* Dodwell. 1 Ld. Raym. 734.

Gloucestershire, (to wit) DUlcibella Lawrence, widow, who was the wife of *William Lawrence*, esq; by *Joseph Yate* her attorney, demands against *William Dodwell*, esq; *George Guinnot*, gent. *Thomas Longdon*, gent. and *Randal Ploydell*, gent. the third part of six messuages, six gardens, 210 acres of land, 142 acres of meadow, 114 acres of pasture, and of three acres of wood, with the appurtenances, in *Badgworth*, *Sherington Magna*, *Sherington Parva*, *Bentham*, *Uphatherly*, *Wythington* and *Chedworth*, as the dower of her the said *Dulcibella*, of the endowment of the aforesaid *William*, formerly her husband, &c.

Count in dower.

And the aforesaid *William Dodwell*, *George*, *Thomas* and *Randall*, by *Edward Morse* their attorney come and say, that the aforesaid *Dulcibella* ought not to have her dower of the tenements aforesaid, with the appurtenances whereof, &c. of the endowment of the said *William Lawrence*, formerly her husband, against them, because they say, that the said *William Lawrence*, formerly her husband, &c. was seised

Plea in bar, That the husband devised land to plaintiff, and avers the same was in lieu of dower.

seised (amongst other things) in his demesne as of fee of and in the manor of *Sherington Parva*, with the appurtenances, and of and in one messuage, two gardens, two orchards, 50 acres of land, 100 acres of meadow and 50 acres of pasture, with the appurtenances, in the parish of *Badgworth* in the county aforesaid; and being so seised thereof, on the last day of *April* in the year of our Lord 1697, at *Sherington Parva* aforesaid, made his last will and testament in writing, and by his said will willed and devised the manor and tenements aforesaid, with the appurtenances, to the said *Dulcibella*; to have and to hold to her the said *Dulcibella* during her widowhood. And afterwards the aforesaid *William Lawrence* at *Sherington Parva* aforesaid died so seised of such his estate thereof, after whose death the said *Dulcibella* entered into the manor and tenements aforesaid, with the appurtenances, and was and yet is seised thereof in her demesne as of her freehold for the term of her widowhood, by virtue of the devise aforesaid; with this, that they the said *William Dodwell*, *George*, *Thomas* and *Randall* will verify, that the said devise by the said *William Lawrence* to her the said *Dulcibella* of the manor and tenements aforesaid, with the appurtenances, in form aforesaid made, was in full recompence of the whole dower of the said *Dulcibella* happening, of all the tenements which were of the said *William*, formerly her husband, &c. and this they are ready to verify: wherefore they pray judgment if the aforesaid *Dulcibella* ought to have her dower of the tenements aforesaid, with the appurtenances whereof, &c. against them, &c.

Demurrer, and joinder in demurrer.

Pleas before the Lord the King at Westminster *of the Term of the Holy* Trinity *in the twelfth Year of the Reign of* William *the Third, now King of* England, &c. Roll 464, or 414.

Broughton *against* Langley. 2 Ld. Raym. 873.

Yorkshire, (to wit) BE it remembered, that heretofore, to wit, in the term of *Easter* last past before the lord the king at *Westminster* came *Humfrey Broughton* by *William Midgley* his attorney, and brought here into the court of the said lord the king then there his certain bill against *Abraham Langley*, gent. in custody of the marshal, &c. of a plea of trespass and ejectment; and there are pledges of prosecuting,

to

to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Yorkshire*, to wit, *Humfrey Broughton* complains of *Abraham Langley* in custody of the marshal of the *Marshalsea* of the lord the king, being before the king himself, for that, to wit, that whereas one *John Ramsden* the younger on the first day of *April* in the 12th year of the reign of our lord *William* the third, now king of *England*, &c. at *Hipperholme with Brigghouse* within the parish of *Hallifax* in the county aforesaid, had demised, granted and to farm lett to the said *Humfrey* three messuages, twenty acres of land, twenty acres of meadow and twenty acres of pasture, with the appurtenances, situate, lying and being at *Hipperholme with Brigghouse* aforesaid within the parish of *Hallifax* aforesaid; to have and to hold the tenements aforesaid with the appurtenances, to the said *Humfrey* and his assigns, from the first day of *March* last past until the full end and term of five years from thence next ensuing and fully to be compleat and ended; by virtue of which said demise the said *Humfrey* entered into the tenements aforesaid, with the appurtenances, and was possessed thereof until the said *Abraham* afterwards, to wit, on the same first day of *April* in the year abovesaid, at *Hipperholme with Brigghouse* aforesaid within the parish of *Hallifax* aforesaid in the county aforesaid, with force and arms into the tenements aforesaid with the appurtenances, in and upon the possession of him the said *Humfrey* thereupon entered, and him the said *Humfrey* from his farm aforesaid, his term thereof not being ended, ejected and removed, and him the said *Humfrey* from his possession aforesaid so ejected and removed, kept out, and yet keeps out thereof, and other wrongs then and there to him did, against the peace of the said lord the now king, to the damage of him the said *Humfrey* of 40 *l.* and thereupon he brings suit, &c.

Ejectment.

And now here at this day, to wit, *Wednesday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *Abraham* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* come as well the said *Humfrey* by his attorney aforesaid, as the said *Abraham* by *Joseph Banks* his attorney; and the said *Abraham* defends the force and injury when, &c. and saith, that he is not thereof guilty; and of this he puts himself upon the country, and the aforesaid *Humfrey* likewise, &c. Therefore let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process is thereupon continued between the parties aforesaid of the plea

plea aforesaid, by the jury being thereupon respited between them, before the lord the king at *Westminster* until *Wednesday* next after three weeks of Saint *Michael*, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, shall first come, on *Saturday* the twentieth day of *July* at the castle of *York* in the county aforesaid, by form of the statute, *&c.* for want of jurors. At which day before the lord the king at *Westminster* cometh the said *Humfrey* by his attorney aforesaid. And the said justices of the lord the king before whom at the assizes, *&c.* have sent here their record before them had in these words, to wit, Afterwards on the day and at the place within contained, before *John Turton*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, and *John Blencowe*, knt. one of the justices of the said lord the king of the bench, justices of the said lord the king, assigned to hold pleas before the king himself, come as well the within named *Humfrey* as the within written *Abraham* by their attornies within contained. And the jurors of the jury, whereof mention is within made, being called, certain of them, to wit, *Henry Woodhouse*, *Robert Gill*, *Stephen Day*, *John Wright*, *Anthony Worrell*, *George Helliwell*, *Nathaniel Dyson* and *Richard Smeaton*, come, and are sworn upon that jury: and because the rest of the jurors of the said jury did not appear, therefore others of the bystanders by the sheriff of the county aforesaid to this being chosen, at the request of the said *Humfrey*, and by the command of the justices aforesaid are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided: and the jurors so newly appointed, to wit, *Christopher Raper*, *William Eyre*, *William Cockshott* and *John Brown* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled and sworn, say upon their oath, that before the said time of the trespass and ejectment aforesaid above supposed to be done, one *Robert Ramsden*, the grandfather of the said *John Ramsden* the younger, the lessor of the plaintiff, in his life time was seised of and in the tenements in the declaration aforesaid mentioned, with the appurtenances, in his demesne as of fee; and being so seised thereof, on the sixth day of *April* in the year of our Lord one thousand six hundred and eighty-nine, made his last will and testament in writing, and by the same gave and devised the tenements aforesaid, with the appurtenances, in these *English* words following, to wit, I do hereby give, devise and bequeath unto *John Stancliffe* of *Bailey*-

Special verdict.

Bailey-Hall in *Southowrome*, and to *Robert Ramsden* my second son, and their heirs and assigns, all those my messuages or tenements, with the appurtenances at *Norwood-green*, and all the houses, buildings, lands, closes and grounds to the same belonging, now in the tenures or occupations of *Jeremiah Robinson* and *Robert Wilson*, or their assigns; and I do hereby express, publish and declare, that the said *John Stancliffe*, and *Robert Ramsden* my son and their heirs, and the survivor of them and his heirs, shall by force and virtue of this my last will stand and be seised of the said messuages or tenements, to all the uses, behoofs, intents and purposes herein after mentioned, that is to say, first of intent and purpose that they shall permit and suffer the said *George Ramsden* my son to have, receive and take the rents, issues and profits of the said messuages and tenements, for and during the term of his natural life, and after the decease of the said *George* my son, shall stand seised thereof to the use and behoof of the heirs of the body of the said *George* my son lawfully begotten and to be begotten; and for default of such issue, to the use and behoof of the said *John Ramsden* and *Robert Ramsden* my sons, and of their heirs and assigns for ever, equally to be divided amongst them; provided always and upon condition, that if it shall fortune the said *George* my son to marry, and to take to wife any woman during his life that shall have *bona fide* one or more hundred pounds, that then the said *John Stancliffe*, and *Robert Ramsden* my son, and the said *George*, shall have power by virtue of this my will to make a jointure to and for such wife of ten pounds a year of the same lands for every sum of one hundred pounds such woman or wife shall *bona fide* have of her own portion and right, for and during the term of the natural life of such wife, and after to the heirs of the body of the said *George* upon such wife; any thing herein to the contrary notwithstanding: and amongst other things the said *Robert Ramsden* the grandfather, by his same last will further gave and devised other tenements, with the appurtenances, in these *English* words following, to wit, I do hereby devise and bequeath unto *Robert Ramsden* my second son, and to his heirs and assigns for ever, all those my messuages, lands, tenements and hereditaments, with all their appurtenances, lying and being at *Norwood-green* in *Hipperholme* in the said county of *York*, now in the tenure or occupation of *Richard Riddlesden*, or his assigns, upon condition nevertheless, and to the intent and purpose, that he the said *R. Ramsden* my son, his heirs and assigns, shall permit and suffer *George Ramsden* my youngest son, his heirs and assigns, peaceably and quietly at all times hereafter for ever

ever to occupy, possess and enjoy one close of land called *Paradice* in *Hipperholme* aforesaid, now or commonly occupied with a messuage near thereunto called *Lane Ends*, and to take the rents, issues and profits of the same close to his the said *George's* and his heirs own use and uses for ever; or in default thereof, my will and mind is, that the said *George* my son and his heirs shall from and after any disturbance or molestation to him or them made or given by the said *Robert Ramsden* my son, his heirs or assigns, in the peaceable enjoyment of the said close called *Paradice*, enter into one messuage, tenement or farm, part of the said messuages, lands and tenements last above mentioned, and now or late in the tenure or occupation of one *Henry Waddington*, or his assigns, and to take the rents, issues and profits thereof, until such times as the said *Robert Ramsden* my son and his heirs shall forbear and give over such molestation or disturbance, and give him the said *George* my son and his heirs security that he the said *Robert* my son, or his heirs, nor any of them, shall at any time hereafter disturb or molest the said *George* my son, or his heirs, in the peaceable enjoyment of the said close called *Paradice*, as by the last will and testament aforesaid to the jurors aforesaid in evidence shewn, among other things, is more fully manifest and appeareth; and the jurors of the said jury upon their said oath further say, that the said *Robert Ramsden* had issue of his body lawfully begotten, his three sons, to wit, *John*, *Robert* and *George Ramsden*, and that the said *George*, after the death of the said *Robert Ramsden* his father, which happened in the year of our Lord 1689, entered into the tenements aforesaid, with the appurtenances, and held and enjoyed the same, and took and received the rents and profits thereof, and converted the same to his own use during his life, according to the intention of the last will aforesaid; and in his life-time, to wit, on the first day of *April* in the year of our Lord 1690, at *Hipperholme with Brigghouse* aforesaid, by a certain indenture then and there made between the said *George Ramsden*, by the name of *George Ramsden* of *Heath* in *Skircoate* within the parish of *Hallifax* in the county of *York*, yeoman, of the one part, and one *Roger Reeve* by the name of *Roger Reeve* of *Barnards-Inn*, *London*, gent. of the other part, and to the said jurors in evidence shewn, for and in consideration of five shillings of lawful money of *England* by the said *Roger Reeve* in hand paid to the said *George Ramsden*, before the sealing and delivery of the same indenture, and for divers other good causes and considerations him thereunto moving, the said *George Ramsden* bargained and sold the tenements aforesaid, with the appurtenances, (among other things) to the said

ſaid *Roger Reeve*; To have and to hold the tenements aforeſaid, with the appurtenances, to him from the day next before the day of the date of the ſame indenture, for and during the term of one whole year from thence next following fully to be compleat and ended; by virtue of which ſaid bargain and ſale, and alſo by force of the ſtatute for transferring of uſes into poſſeſſion, the ſaid *Roger Reeve* was poſſeſſed of the tenements aforeſaid, with the appurtenances, as the law requireth; and being ſo poſſeſſed thereof, afterwards, to wit, on the ſecond day of *April* in the year of our Lord 1690 aboveſaid, at *Hipperholme with Brigghouſe* aforeſaid, by a certain other indenture then and there made between the ſaid *George Ramſden*, by the name of *George Ramſden* of *Heath* in *Skircoate* within the pariſh of *Hallifax* in the county of *York*, yeoman, of the firſt part, and the ſaid *Roger Reeve*, by the name of *Roger Reeve* of *Barnards-Inn*, *London*, gent. of the ſecond part, and one *William Wilton*, by the name of *William Wilton* of *Blead-Syke* in *Hipperholme with Brigghouſe* in the ſaid county, yeoman, of the third part; and to the ſaid jurors in evidence ſhewn, the ſaid *George Ramſden*, to the intent and purpoſe to dock and cut off all intails and eſtates-tail then before created, limited or made of or upon the tenements aforeſaid, with the appurtenances, and all and every remainder and remainders, reverſion and reverſions, and other limitations whatſoever thereupon limited, being or depending, and for ſettling and eſtabliſhing the ſame to the uſes in and by the ſame indenture expreſſed, mentioned, limited and declared, and for other good cauſes and conſiderations him thereunto moving, he the ſaid *George Ramſden* releaſed and confirmed, and by the ſaid indenture did releaſe and confirm to the ſaid *Roger Reeve* the tenements aforeſaid, with the appurtenances; To have and to hold thoſe tenements, with the appurtenances, to the ſaid *Roger Reeve* and his heirs until a common recovery might be had and perfected thereof, and then to all ſuch uſes, intents, limitations and purpoſes as were afterwards in the ſame indenture mentioned, limited and declared; and to no other uſe, intent or purpoſe whatſoever; and by the ſame indenture it was covenanted, granted, concluded and fully agreed by and between all the ſaid parties to the ſame indenture, and the ſaid *George Ramſden* and *Roger Reeve* did covenant, promiſe and grant to and with the ſaid *William Wilton*, that they the ſaid *George Ramſden* and *Roger Reeve*, before the end of the term of the Holy *Trinity* next following the date of the ſame indenture, at the proper coſts and charges in the law of the ſaid *George Ramſden*, or his aſſigns, would ſuffer, or cauſe to be ſuffered, one or more perfect recovery or recoveries of all and ſingular the tenements

tenements aforesaid, with the appurtenances, by such names, numbers of acres and quantities of things, as by fit council should be advised, wherein the said *William Wilton* should be demandant against the said *Roger Reeve*, and that the said *Roger* should appear *gratis*, and vouch to warranty him the said *George Ramsden*, who likewise should appear and vouch to warranty the common vouchee, who also should appear, and after having had leave to imparl, should make default, and depart in contempt of the court, by which, one or more recovery or recoveries, as hath been used and accustomed in such cases, should be had and suffered, and that the said recovery or recoveries so as abovesaid to be had and suffered by and between the said parties, or any of them, should be and enure, and by that indenture it was declared to be and enure to the use and behoof of the said *George Ramsden* his heirs and assigns for ever, and to no other use or uses, intents or purposes whatsoever; as by the same indenture to the said jurors in evidence shewn is more fully manifest and appeareth; and that by reason of the premisses the said *Roger Reeve* was seised of the tenements aforesaid, with the appurtenances, as the law requireth; and being so seised thereof, the said *William Wilton* afterwards, to wit, on the ——— day of ——— in the second year of the reign of the said lord the now king and the lady *Mary* late queen of *England*, sued forth out of their court of chancery at *Westminster* in the county of *Middlesex* a certain writ of them the said lord the king and lady the queen of entry *Sur Disseisin in le post*, against the said *Roger Reeve*, of the tenements aforesaid with the appurtenances, amongst other things, directed to the then sheriff of *York* aforesaid, by the names of seven messuages, ten gardens, fifty acres of land, twenty acres of meadow, fifty acres of pasture, sixty and six shillings rent, common of pasture for all cattle, and common of turbary with the appurtenances, in *Skircoate*, *Hipperholme with Brigghouse* and *Southowrome* in the parish of *Hallifax*, as his right and inheritance, by which said writ it was commanded to the said sheriff, that he should command the said *Roger* that justly and without delay he should render to the said *William Wilton* the tenement, rent and commons aforesaid, with the appurtenances, which he then claimed to be his right and inheritance, and into which the said *Roger* had then not had entry, but after the disseisin which *Hugh Hunt* thereof unjustly and without judgment made to the said *William* within thirty years then last past, as he then said, and whereupon he then complained that the said *Roger Reeve* then unjustly deforced him thereof, and unless he should do it, and the said *William Wilton* should then make

make him the sheriff secure concerning the prosecuting of his claim, then he should summon by good summoners the said *Roger Reeve*, that he should be before the justices of the said then king and queen at *Westminster* aforesaid——then next following, to shew wherefore he had not done it, and that he should then have there the summoners, and that writ: at which day before *Henry Pollexfen*, knt. and his companions, then justices of the then king and queen of the bench at *Westminster* aforesaid, came as well the said *William Wilton* as the said *Roger Reeve* in their proper persons; and the sheriff, to wit,——returned the writ aforesaid, executed in the form following, that is to say, that the said *William Wilton* had found to the same sheriff pledges of prosecuting his said writ, to wit, *John Doe* and *Richard Roe*, and that the said *Roger* was summoned by *John Den* and *Richard Fen*, and upon this the said *William Wilton*, by declaring against the said *Roger* upon the writ aforesaid, then demanded against him the tenements, rent and commons aforesaid, with the appurtenances, as his right and inheritance, and into which the said *Robert* had not entry, but after the disseisin which *Hugh Hunt* thereof unjustly and without judgment made to the said *William* within thirty years, &c. and whereupon he then said that he himself was seised of the tenement, rent and commons aforesaid, with the appurtenances, in his demesne as of fee and right, in the time of peace in the time of the said king and queen, by taking the profits thereof to the value, &c. and into which, &c. and thereupon he then brought suit, &c. and the aforesaid *Roger* in his proper person then defended his right when, &c. and vouched thereof to warranty the aforesaid *George Ramsden*, summoned in the county aforesaid, so that the then sheriff should have him here on the morrow of the ascension of our Lord then next following, by the aid of the court, &c. The same day was given to the parties aforesaid there, &c. and thereupon the said *Roger* put in his stead *John Empson* and *Joseph Butler* his attornies, jointly and severally against the aforesaid *William*, to gain or lose of the plea aforesaid, &c. at which day here came as well the aforesaid *William Wilton* in his proper person, as the aforesaid *Roger* by the said *John Empson* his attorney, and the aforesaid *George* being summoned, &c. by *Thomas Gill* his attorney likewise came and freely warranted to him the tenements, rent and commons aforesaid, with the appurtenances, &c. and thereupon the aforesaid *William* demanded against him the said *George*, tenant by his warranty, the tenements, rent and commons aforesaid, with the appurtenances aforesaid, in form aforesaid, &c. and whereupon he then said that he himself was seised of the tenements,

rent and commons aforesaid, with the appurtenances, in his demesne as of fee and of right, in time of peace in the time of the said king and queen, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereupon he then brought suit, *&c.* and the aforesaid *George*, tenant by his warranty, then defended his right when, *&c.* and further vouched thereof to warranty *John Wheeler*, who was then likewise present in court here in his proper person, and freely warranted to him the tenements, rent and commons aforesaid, with the appurtenances, *&c.* and upon this the aforesaid *William* demanded against him the aforesaid *John*, tenant by his warranty, the tenements, rent and commons aforesaid, with the appurtenances, in form aforesaid, *&c.* And whereupon the said *William* then said that he himself was seised of the tenements, rent and commons aforesaid, with the appurtenances, in his demesne as of fee and right in time of peace in the time of the said king and queen, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereupon he then brought suit, *&c.* and the aforesaid *John Wheeler*, tenant by his warranty, defended his right when, *&c.* and then said that the aforesaid *Hugh* did not disseise the said *William* of the tenements, rent and commons aforesaid, with the appurtenances, as the said *William* by his writ and declaration aforesaid above supposed; and of this he then put himself upon the country, and the aforesaid *William* then prayed leave thereof to imparl, and he had it, *&c.* and afterwards the said *William* came again in the same court in that same term in his proper person, and the aforesaid *John*, although solemnly called came not again, but departed in contempt of the court, and made default; therefore it was considered that the aforesaid *William* should recover his seisin against the said *Roger* of the tenements, with the rent and commons aforesaid, with the appurtenances, and that the said *Roger* should have of the land of the said *George* to the value, *&c.* and that the said *George* should further have of the land of the said *John* to the value, *&c.* and the said *John Wheeler* should be in mercy, *&c.* And thereupon the said *William* prayed the writ of the said king and queen, to be directed to the sheriff of the county of *York* aforesaid, to cause full seisin to be delivered to him of the tenements, rent and commons aforesaid, with the appurtenances; and it was granted to him returnable in the same court here in eight days of the *Holy Trinity* then next following, at which day came in the same court here the aforesaid *William* in his proper person, and the sheriff, to wit, *Christopher Wandesford*, bart. then returned that he by virtue of the writ aforesaid,

aforesaid, on the ninth day of *June* then last past had caused to be delivered to the said *William* full seisin of the tenements, rent and commons aforesaid, with the appurtenances, as by that writ he was commanded, as by the exemplification of that record to the said jurors in evidence shewn more fully appeareth; and by reason of the premisses he the said *George Ramsden* was seised of the tenements within specified, with the appurtenances, as the law requireth; and being so seised thereof, the aforesaid *Abraham Langley* lent and paid to the aforesaid *George Ramsden* the sum of 150 *l.* specified in the indenture of release afterwards mentioned, and thereupon afterwards, to wit, on the first day of *November* in the ninth year of the reign of the lord the now king, by a certain indenture then made between him the said *George Ramsden*, by the name of *George Ramsden* of *Heath* in *Skircoate* in the county of *York*, yeoman, of the one part, and the within named *Abraham Langley*, by the name of *Abraham Langley*, of *Priestley* in *Hipperholme* in the county aforesaid, gent. of the other part, to the said jurors also in evidence shewn, for and in consideration of five shillings to the said *George Ramsden* by the said *Abraham* in hand paid, the said *George Ramsden* bargained and sold the tenements within written, with the appurtenances, to the said *Abraham*; to have and to hold from the day next before the day of the date of the same indenture, for and during and unto the full end and term of one whole year from thence next following and fully to be compleat and ended: by virtue of which said bargain and sale, and also by force of the statute aforesaid, the said *Abraham* was possessed of the tenements aforesaid with the appurtenances, as the law requireth; and being thereof so possessed, and the aforesaid *George* being seised of the reversion thereof, as the law requireth, afterwards, to wit, on the second day of *November* in the ninth year abovesaid, by a certain other indenture then made between him the said *George Ramsden* of *Heath* in *Skircoate* in the county of *York*, yeoman, of the one part, and the said *Abraham*, by the name of *Abraham Langley* of *Priestley* in *Hipperholme* in the county aforesaid, gent. of the other part, to the said jurors in evidence shewn, the said *George Ramsden* for and in consideration of the sum of 150 *l.* of lawful money of *England* to the said *George Ramsden* by the said *Abraham*, before the sealing and delivery of the same indenture, well and truly in hand paid, the said *George* granted and released to the said *Abraham* the tenements within written, with the appurtenances, to the said *Abraham Langley*; to have and to hold those tenements with the appurtenances, to the said *Abraham Langley*, his heirs and

 assigns,

assigns, to the only use and behoof of the said *Abraham Langley*, his heirs and assigns for ever: and by reason of the premisses the said *Abraham* entered into those tenements with the appurtenances, and was seised thereof, as the law requireth; and being so seised thereof, the said *George* afterwards, to wit, the first day of *December* in the year of our Lord 1697 died; and the said jurors further say upon their oath, that the within named *John Ramsden* the younger afterwards, to wit, on the within written first day of *April* in the twelfth year of the reign of the lord the now king, demised, granted and to farm lett to the said *Humfrey* the said tenements with the appurtenances; to have and to hold those tenements, with the appurtenances, to the said *Humfrey* and his assigns, from the first day of *March* then last past until the full end and term of five years from thence next following fully to be compleat and ended, as within is supposed: by virtue of which said demise he the said *Humfrey* entered into the tenements aforesaid, with the appurtenances, and was possessed thereof, until the aforesaid *Abraham* afterwards, to wit, the same first day of *April* in the twelfth year abovesaid into the tenements aforesaid with the appurtenances, in and upon the possession of him the said *Humfrey* thereupon entered, and him the said *Humfrey* from his farm aforesaid ejected, expelled and removed, as within is alledged: but whether upon the whole matter aforesaid in form aforesaid found, the said *Abraham* be guilty of the trespass and ejectment within written, or not, the jurors are wholly ignorant, and thereupon pray the advice of the court here in the premisses; and if upon the whole matter aforesaid in form aforesaid found it shall seem to the justices here that the said *Abraham* is guilty of the trespass and ejectment aforesaid, then they the said jurors say upon their oath, that the said *Abraham* is guilty of the trespass and ejectment aforesaid, as the said *Humfrey* within complains against him; and then they assess the damages of him the said *Humfrey*, by occasion of that trespass and ejectment, besides his costs and charges by him about his suit in this behalf laid out, to two pence, and for those costs and charges to forty shillings: and if upon the whole matter aforesaid in form aforesaid found it shall seem to the justices here that the said *Abraham* is not guilty of the trespass and ejectment aforesaid, then they the said jurors say upon their oath that the aforesaid *Abraham* is not guilty of the trespass and ejectment aforesaid, as the said *Abraham* within in pleading hath alledged, *&c.*

Plea

Pleas before the Lady the Queen at Westminster *of the Term of Saint* Hilary *in the first Year of the Reign of* Ann, *now Queen of* England, &c. Roll 435.

Coggs *against* Barnard. 2 Ld. Raym. 909.

Middlesex, (to wit) BE it remembered, that heretofore, to wit, in the term of Saint *Michael* last past before the lady the queen at *Westminster* came *John Coggs* by *Joseph Sherwood* his attorney, and brought into the court of the said lady the queen then there his certain bill against *William Barnard,* in custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, (to wit) *John Coggs* complains of *William Barnard,* in custody of the marshal of the *Marshalsea* of the lady the queen being before the queen herself, for that, (to wit) that whereas the said *William* on the tenth day of *November* in the thirteenth year of the reign of the lord *William* the third, now king of *England,* &c. at the parish of Saint *Clement Danes* in the county of *Middlesex* aforesaid, undertook to take up safely and securely divers casks of brandy of him the said *John,* then being in a certain cellar, situate in a certain place called *Brooks-market* in the parish of Saint *Andrew Holborn* in the county aforesaid, and undertook upon himself to lay the same down safely and securely in a certain other cellar, situate in a certain other place called *Water-street* in the parish of Saint *Clement Danes* in the county aforesaid: he the said *William,* his servants and agents, afterwards to wit, the same day and year, at the parish of Saint *Clement Danes* aforesaid, so negligently and improvidently managed the said casks of brandy in laying them down in the cellar last mentioned, that for want of the good care of the said *William,* his servants and agents, one of the same casks of brandy was then and there staved, and a great quantity, to wit, 150 gallons of brandy in the said cask by that means was spilled upon the ground and lost. And also whereas the said *William* afterwards, to wit, on the same tenth day of *November* in the 13th year abovesaid, in the parish of Saint *Clement Danes* aforesaid in the county of *Middlesex* aforesaid, undertook to take up safely and securely divers other casks of brandy of him the said *John,* being then in a certain other cellar, situate in a certain

Assumpsit to take up casks of brandy in one cellar and lay them down in another.

First count.

Breach.

Second count.

certain place called *Brooks-market* in the parish of Saint *Andrew Holborn* in the county aforesaid, and to put those casks there upon a cart to be carried to a certain other cellar, situate in a certain other place called *Water-street* in the parish of Saint *Clement Danes* in the county aforesaid, and the same casks, to the cellar last aforesaid, situate in *Water-street* last aforesaid, so being carried as aforesaid, there safely and securely to let down out of the cart aforesaid, and lay down in the cellar last aforesaid, he the said *William*, his servants and agents afterwards, to wit, the same day and year abovesaid, at the parish of Saint *Clement Danes* aforesaid, the casks of brandy last aforesaid so negligently and improvidently managed in laying them down in the cellar last mentioned, that for want of the good care of the said *William*, his servants and agents, one of the same casks of brandy last mentioned was then and there staved, and a great quantity, to wit, 150 gallons of the brandy last aforesaid, being in the same cask last mentioned, was by that means then and there spilled upon the ground and lost; whereupon the said *John* saith that he is injured, and hath damage to the value of 100 *l*. And thereupon he brings suit, &c.

Breach.

And now at this day, to wit, *Saturday* next after eight days of Saint *Hilary* in this same term, until which day the said *William Barnard* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lady the queen at *Westminster* come as well the said *John Coggs* by his attorney aforesaid, as the said *William Barnard* by *William Collier* his attorney; and the said *William Barnard* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country, and the said *John Coggs* likewise, &c. Therefore let a jury come before the lady the queen at *Westminster* on *Monday* next after the morrow of the purification of the blessed virgin *Mary*; and who neither, &c. to take cognizance, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process thereupon is continued between the parties, of the plea aforesaid, by the jury being respited thereupon between them, before the lady the queen at *Westminster* until *Thursday* next after eight days of the purification of the blessed virgin *Mary* from thence next following, unless the lady the queen's right trusty and well-beloved sir *John Holt*, knt. chief justice of the lady the queen, assigned to hold pleas in the court of her the said lady the queen, before the queen herself, before, on *Wednesday* next after eight days of the purification of the blessed virgin *Mary*, at *Westminster* aforesaid in the county of *Middlesex*

Imparlance.

Not guilty pleaded.

Nisi prius.

dlesex aforesaid, in the great hall of pleas there, by form of the statute, *&c.* shall come, for want of jurors, *&c.* At which day before the lady the queen at *Westminster* cometh the said *John Coggs* by his attorney aforesaid: and the said chief justice of the lady the queen before whom, *&c.* hath sent his record before him had in these words: Afterwards on the day and at the place within contained, before sir *John Holt*, knt. the chief justice within written, *John Ince*, gent. being associated to him by form of the statute, *&c.* come as well the within named *John Coggs* as the within named *William Barnard* by their attornies within contained: and the jurors of the jury being called likewise come, who being tried and sworn to speak the truth concerning the matters within contained, say upon their oath, that the said *William Barnard* is guilty of the premisses within laid to his charge, in manner and form as the said *John Coggs* within complains against him; and they assess the damages of him the said *John Coggs*, by reason thereof, besides his costs and charges by him laid out about his suit in this behalf, to 10 *l.* and for those costs and charges to 20 *s.* Therefore it is considered that the said *John Coggs* do recover against the said *William Barnard* his damages aforesaid, by the said jury in form aforesaid assessed, and also 21 *l.* for his costs and charges aforesaid to the said *John Coggs*, by the court of the said lady the queen now here with his consent of increase adjudged; which said damages in the whole amount to 32 *l.* and the said *William Barnard* in mercy, *&c.*

Postea.

Verdict for the plaintiff.

Final judgment.

Pleas at Westminster *before* George Treby, *Knt.* *and his Companions, Justices of the Lord the King and Lady the Queen of the Bench, of the Term of the Holy* Trinity *in the sixth Year of the Reign of the Lord* William *and Lady* Mary, *by the Grace of God, of* England, Scotland, France *and* Ireland *King and Queen, Defenders of the Faith,* &c. Roll 304.

Knight and his Wife *against* the Mayor, &c. of Wells. 1 Ld. Raym. 80.

HERETOFORE, as it appeareth in the term of Saint *Hilary* last past in the 1098th roll it is thus contained: *Somersetshire*, (to wit) the mayor, masters and burgesses of the city or borough of *Wells*, otherwise, called the mayor, aldermen and burgesses of the city or borough of *Wells* in the county of *Somerset*, in mercy, for many defaults, &c. they the said mayor, masters and burgesses were summoned to answer *Joseph Knight*, esq; and *Philippa* his wife, lately called *Philippa Gore*, of a plea that they render to them 200 *l.* which they owe to them and unjustly detain, &c. and whereupon the said *Joseph* and *Philippa*, by *Joseph Yate* their attorney say, that whereas the said mayor, masters and burgesses, by the name of mayor, aldermen and burgesses of the city or borough of *Wells* in the county of *Somerset*, on the 12th day of *July*, in the second year of the reign of *James* the second, late king of *England*, &c. at the city of *Wells* in the county of *Somerset*, by their certain writing obligatory, sealed with their common seal, which they the said *Joseph Knight* and *Philippa* bring here into court, the date whereof is the same day and year, granted themselves to be bound to the said *Philippa* while she was sole, by the name of Mrs. *Philippa Gore* of *Barrow* in the county aforesaid, widow, in the aforesaid 200*l.* to be paid to the said *Philippa*, when they should be thereunto requested: nevertheless the aforesaid mayor, masters and burgesses of the city or borough of *Wells* aforesaid, although often requested, have not rendered the said 200 *l.* to the said *Philippa* while she was sole, or to them the said *Joseph Knight* and *Philippa* after the espousals were celebrated between them, but have denied, and yet do deny to render the same

Declaration in debt upon a bond to the plaintiff's wife while sole against the corporation of *Wells*.

same to them; whereupon they say that they are injured, and have sustained damage to the value of 40*l.* and thereupon they bring suit, *&c.*

And the aforesaid mayor, masters and burgesses, by *John Davis* their attorney, come and defend the force and injury when, *&c.* and thereupon pray leave to imparl here until from *Easter* day in fifteen days; and they have it, *&c.* The same day is given to the aforesaid *Joseph Knight* and *Philippa* here, *&c.* At which day here come as well the said *Joseph Knight* and *Philippa*, as the aforesaid mayor, masters and burgesses, by their attornies aforesaid; and the aforesaid mayor, masters and burgesses, pray further leave to imparl thereupon here until on the morrow of the Holy *Trinity*; and they have it, *&c.* The same day is given to the aforesaid *Joseph Knight* and *Philippa* here, *&c.* And now here at this day, that is to say, on the morrow of the Holy *Trinity* aforesaid come as well the aforesaid mayor, masters and burgesses, as the aforesaid *Joseph Knight* and *Philippa* by their attornies aforesaid: and hereupon they the said *Joseph Knight* and *Philippa* pray that the aforesaid mayor, masters and burgesses may answer to their said declaration; and they the said mayor, masters and burgesses, as before, defend the force and injury when, *&c.* and say that they ought not to be charged with the debt aforesaid, by virtue of the said writing obligatory, because they say, that that writing is not the deed of them the said mayor, masters and burgesses; and of this they put themselves upon the country, and the aforesaid *Joseph Knight* and *Philippa* likewise: therefore the sheriff is commanded that he cause to come here from the day of the Holy *Trinity* in three weeks twelve, *&c.* by whom, *&c.* and who neither, *&c.* to take cognizance, *&c.* because as well, *&c.* At which day the jury between the parties aforesaid of the plea aforesaid was thereupon respited between them here until this day, that is to say, from the day of Saint *Michael* in three weeks then next following, unless the justices of the lord the king and lady the queen, assigned to take the assizes in the county aforesaid, by form of the statute, *&c.* on *Wednesday* the 15th day of *August* next, past, at the city of *Wells* in the county aforesaid, should before come: and now here at this day come as well the said *Joseph Knight* and *Philippa* as the aforesaid mayor, masters and burgesses of the city or borough of *Wells* aforesaid by their attornies aforesaid. And the aforesaid justices of assize before whom, *&c.* have sent here their record in these words: Afterwards on the day and at the place within contained, before *John Powell*, knt. one of the justices of the lord the king and lady the queen of the bench, and *Thomas Rokeby*, another

Imparlance.

Plea *Non est factum* issue to the country.

Postea.

another justice of the said lord the king and lady the queen of the bench, justices of the said lord the king and lady the queen, assigned to take the assizes in the county of *Somerset*, by form of the statute, &c. come as well the within named *Joseph Knight*, esq; and *Philippa* his wife, lately called *Philippa Gore*, as the within written mayor, masters and burgesses of the city or borough of *Wells*, otherwise called the mayor, aldermen and burgesses of the city or borough of *Wells* in the county of *Somerset*, by their attornies within contained; and the jurors of the jury, whereof mention is within made, being called, some of them, that is to say, *Thomas Sambourn*, *James Tucker* and *Joseph Horle* came, and are sworn upon that jury: and because the rest of the jurors of the same jury did not appear, therefore others of the bystanders, by the sheriff of the county aforesaid chosen for this purpose, at the request of the said *Joseph Knight* and *Philippa* his wife, and by the command of the justices aforesaid are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, to wit, *John Webber*, *John Spireing*, *Giles Ford*, *William Bagg*, *Edward Austice*, *Hugh Brome*, *William Horler*, *John Butcher* and *John Cording* being called likewise come, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the said other jurors before impanelled and sworn for this purpose, say upon their oath, that long before the time of making the writing obligatory within written, lady *Elizabeth*, late queen of *England*, &c. by her letters patent under her great seal of *England*, bearing date the 19th day of *July* in the 31st year of her reign, reciting, that whereas the city or borough of *Wells* in the county of *Somerset* was an antient and populous town, therefore she the said queen willing that for the future for ever there should be had in the said city or borough continually one certain and undoubted method of, and for the keeping the peace and rule and government of the people there, and that the city or borough aforesaid for the future and for ever might be, and remain a city or borough of peace and quietness, to the dread and terror of evil persons, and for the reward of the good, and that peace and other deeds of justice there without delay should be kept; and hoping that the burgesses of that city or borough for the favour and grace of the same queen, to them in her said letters patent granted and declared, would think themselves more strongly bound to perform and fulfil their duty and services to the said queen, and her heirs and successors, of her especial grace, and of her certain knowledge and her own

Tales.

Special verdict.

Finds the charter of incorporation of queen *Elizabeth*.

own mere motion, willed, ordained, constituted, declared and granted, and by the same letters patent for her heirs and successors, hath willed, ordained, constituted, declared and granted, that the said society or borough of *Wells* in the said county of *Somerset* was, and should be a free city or borough of itself, and that the burgesses of that city or borough, and their successors for the future for ever, were and should be one body corporate and politic in thing, fact and name, by the name of the mayor, masters and burgesses of the city or borough of *Wells* in the county of *Somerset*, and them by the name of the mayor, masters and burgesses of the city or borough of *Wells* in the county of *Somerset*, one body corporate and politic in thing, fact and name really, and to the full, for herself the said queen, her heirs and successors, erected, made, ordained, constituted and declared by her said letters patent, and that by the same name they should have perpetual succession: and that they by the name of the mayor, masters and burgesses of the city or borough of *Wells*, were and should be in all future times for ever, able persons and capable in law to have, purchase, receive and possess lands, tenements, liberties, privileges, jurisdictions, franchises and hereditaments, of whatsoever kind, nature or species they might be, to themselves and their successors, in fee and perpetuity, also goods and chattels, and all other things whatsoever of whatsoever kind, nature or species they might be; and also to give, grant, demise and assign lands, tenements and hereditaments, and to do and execute all and every other deeds and things by the name aforesaid: and that by the same name of the mayor, masters and burgesses of the city or borough of *Wells* in the county of *Somerset* aforesaid, they might be able to plead and be impleaded, to answer and be answered, to defend and be defended in all courts and places whatsoever, and before all judges, justices, and other persons and officers whatsoever of the said late queen, and her heirs and successors, in all suits, plaints, causes, matters and demands whatsoever, of whatsoever kind, nature or species they might be, in the same manner and form as other liege persons of the said late queen of this realm of *England*, were and might be able and capable in law to plead and be impleaded, answer and be answered, defend and be defended, and to have, purchase, receive, possess, give, grant and demise. and that the said mayor, masters and burgesses of the city or borough aforesaid, and their successors, should have for ever a common seal, to be kept for all their causes and businesses whatsoever to be done of them and their successors; and that it should and might be well and lawful for the said mayor, masters and burgesses, and their successors,

sors, that seal, at their will and pleasure, from time to time to break, change and make of new, as should seem to them better to be done. And further the said late queen willed, and by her same letters patent for herself, her heirs and successors, ordained, that for ever then for the future there should and might be in the city or borough aforesaid one mayor, and twenty-three of the more discreet and honest burgesses of the city or borough aforesaid, who should be called the common council of the city or borough aforesaid, and should be aiding and assisting to the mayor of the said city or borough of *Wells* for the time being, in all causes and matters concerning the city or borough aforesaid. And further the said late queen willed, and by her same letters patent for herself, her heirs and successors, granted to the said mayor, masters and burgesses of the city or borough aforesaid, and their successors, that by the mayor of the city or borough aforesaid, (for the time being) and the masters and burgesses, being the common council of that city or borough, or by the major part of them, the said mayor, masters and burgesses (of whom the said late queen willed that the mayor of the said city or borough for the time being, and two masters of the city or borough aforesaid, should be three) should have the full power and faculty of instituting, constituting, ordaining and making from time to time all reasonable statutes and ordinances whatsoever for the good rule and government of the burgesses and inhabitants of the city or borough aforesaid for the time being, and for declaring in what manner and order the mayor, masters and burgesses, artificers, inhabitants and resiants of that city or borough should themselves have, bear and use in their offices, mysteries, trades and businesses within the borough aforesaid, and the limits thereof for the time being, and otherwise, for the further good and public utility and government of that city or borough, and for the victualling of the same city or borough, and also for the better preservation, government, disposition, placing out and demising of the lands, tenements, possessions, revenues and hereditaments of the said mayor, masters and burgesses, and their successors, feoffees, grantees or assignees, or their future feoffees, grantees or assignees, and all other affairs and causes whatsoever touching or in any manner concerning the city or borough aforesaid, or the statutes, rights and interest of the same city or borough, which to them should seem good, wholesome, profitable, honest and necessary, according to their sound discretion, not being in any thing prejudicial to the bishop of *Bath and Wells*, and his successors for the time being, or to his liberties, nor to the dean and chapter of the cathedral church of *Wells* and their successors,

successors, or against the laws and customs of this realm of *England*: and that they and their successors, by the mayor for the time being, and the masters and burgesses, being the common council of the said city or borough, or the major part of them as aforesaid, as often as they should make such statutes and ordinances, should constitute, ordain and establish in form aforesaid such reasonable pains, punishments, penalties and imprisonment of body, or by fine and amercement, or by either of them, to and upon all delinquents against such laws, statutes and ordinances, or any of them, or any such, and which to the same mayor, masters and burgesses, the common council of the city or borough aforesaid for the time being, or to the major part of them as aforesaid, should seem to be good, necessary and requisite, and should and might be able to have and levy the same fines and amercements without the hindrance of the said late queen, her heirs and successors; all and singular which laws, statutes and ordinances so to be made as aforesaid, the said late queen willed to be observed, under the pains in the same to be contained; nevertheless so that such laws, statutes and ordinances should not be repugnant nor contrary to the laws or statutes of this realm of *England*, nor in any manner prejudicial to the bishop of *Bath and Wells* and his successors, nor to the prejudice of the said dean and chapter of the cathedral church of *Wells* aforesaid: and furthermore the same late queen willed, ordained, and for herself, her heirs and successors, granted to the aforesaid mayor, masters and burgesses, and to their successors, that for ever for the then future there should and might be in the aforesaid city or borough one mayor and seven masters in number only of the burgesses of the city or borough aforesaid, being of the common council of the same city or borough, to be chosen and appointed in the form in the same letters patent therein after specified, as by the same letters patent, among other things, more fully appears. And furthermore the said late queen willed, and by her same letters patent, of her special grace, and of her certain knowledge and mere motion, granted to the aforesaid mayor, masters and burgesses of her city or borough aforesaid, and to their successors for ever, that from thence for the future there might and should be in the city or borough aforesaid 16 others such of the better and more honest burgesses of the city or borough aforesaid, to be chosen by the same mayor, recorder and masters, or the major part of them, who together with the said mayor and seven masters of the city or borough aforesaid, should fulfil the number of twenty-four capital burgesses or counsellors of the same city or borough, and

and ſhould be, and ſhould be reputed and named the capital burgeſſes and counſellors of the ſame city or borough; which ſaid twenty-four capital burgeſſes and counſellors ſhould make and be for ever, and be called in all future times for ever, the common council of the city or borough aforeſaid, for all things, matters, cauſes and buſineſſes touching and concerning the borough aforeſaid, and the good rule, ſtate and government thereof; and that every one of the ſaid twenty-four capital burgeſſes, not being in the office of mayor of the city or borough aforeſaid, ſhould and were to be from time to time aſſiſtants and aiding to the mayor of the ſame city or borough for the time being, in all cauſes and matters touching or concerning the ſame city or borough, as by the ſame letters patent, among other things, more fully appears. And they the ſaid jurors further upon their oath ſay, That the lord *Charles* the ſecond, late king of *England*, &c. by his letters patent under his great ſeal of *England*, bearing date the 10th day of *January* in the 35th year of his reign, affecting the improvement of his city or borough of *Wells* in his county of *Somerſet*; and then willing that for the future for ever in the ſame city or borough there ſhould be had in the ſaid city or borough continually one certain and undoubted method for the keeping the peace, and good rule and government of the people there, that the city or borough aforeſaid for the future for ever might be and remain a city or borough of peace and quietneſs, for the reward of the good and the terror of evil perſons; and that the peace of the ſaid late king, and other deeds of juſtice there, without further delay ſhould be kept: and hoping that if the mayor, aldermen and burgeſſes of the city or borough of *Wells* aforeſaid, and their ſucceſſors, might have and enjoy more ample liberties, profits and privileges of the grant of the ſaid late king, then they would think themſelves more eſpecially and ſtrongly bound to weigh and perform, the ſervices of the ſaid late king, his heirs and ſucceſſors, of his eſpecial grace, and of his certain knowledge and mere motion, and upon the humble petition of the then mayor, maſters and burgeſſes of the city or borough of *Wells* aforeſaid, willed, conſtituted, declared, ordained and granted, and by his ſame letters patent for himſelf, his heirs and ſucceſſors, hath willed, conſtituted, declared, ordained and granted that the ſaid city or borough of *Wells* in the ſaid county of *Somerſet* was and ſhould for the future remain a free city or borough of itſelf, and that the burgeſſes of the city or borough aforeſaid, by whatſoever name, or by whatſoever names they or their predeceſſors before that time were in-

The charter of incorporation of king *Charles* the ſecond.

incorporated, they were and should be for the future for ever, by force of the same letters patent, one body corporate and politic in thing, fact and name, by the name of The mayor, aldermen and burgesses of the city or borough of *Wells* in the county of *Somerset*, and them and their successors, by the name of the mayor, aldermen and burgesses of the city or borough of *Wells* in the county of *Somerset*, one body corporate and politic in thing, fact and name really and to the full, for himself the said late king, his heirs and successors, erected, made, ordained, constituted, declared and created by his same letters patent; and that by the same name they should have perpetual succession, and that they and their successors, by the name of The mayor, aldermen and burgesses of the city or borough of *Wells*, were and should be in all future times for ever, able persons and capable in law to have and purchase, receive and possess lands, tenements, liberties, privileges, franchises, jurisdictions and hereditaments to them and their successors, in fee and perpetuity, or for term of life or lives, or in any other manner whatsoever, and also goods and chattels, and all other things of whatsoever kind, nature, species or quality they might be; and also to give, grant, demise and assign the same lands, tenements, hereditaments, goods and chattels, and to do and execute all other deeds and things by the name aforesaid: and that by the name of the mayor, aldermen and burgesses of the city or borough of *Wells* aforesaid in the county of *Somerset*, they might be able to plead and be impleaded, to answer and be answered, to defend and be defended in all courts and places whatsoever, and before all judges and justices, and other persons and officers whatsoever of the said lord the king, his heirs and successors, in all and singular actions, pleas, suits, plaints, causes, matters and demands whatsoever, of whatsoever kind, nature or species they might be, in the same manner and form as any other liege persons of the said late king of this realm of *England*, or any other body corporate and politic within this realm of *England*, might and were able to have or purchase, receive, possess, give, grant and demise, and to plead and be impleaded, answer and be answered, defend and be defended: and that the said mayor, aldermen and burgesses of the city or borough of *Wells* aforesaid, and their successors, should have for ever a common seal to be kept for all their causes and businesses whatsoever to be done of them and their successors; and that it should and might be well lawful for the said mayor, aldermen and burgesses of the city or borough aforesaid, and their successors, that seal, at their will and pleasure, from time

time to time to break, change and make of new, as it should seem to them to be better to be done. And further the said late king willed, and by his same letters patent for himself, his heirs and successors, granted to the aforesaid mayor, aldermen and burgesses of the city or borough aforesaid, and their successors, that then for the future for ever there should and might be in the city or borough aforesaid one mayor, and twenty-three of the more discreet and honest burgesses of the city or borough aforesaid, who should be called the common council of the city or borough aforesaid, and should be aiding and assisting to the mayor of the said city or borough of *Wells* aforesaid for the time being, in all causes and matters concerning the city or borough aforesaid. And further the said late king willed, and by his same letters patent for himself, his heirs and successors, granted to the said mayor, aldermen and burgesses of the city or borough of *Wells* aforesaid, and their successors, that they and their successors, by the mayor of the city or borough aforesaid, (for the time being) and the aldermen and burgesses, being the common council of that city or borough or by the major part of them, the said mayor, aldermen and burgesses (of whom the said late king willed that the mayor of the same city or borough for the time being, and two aldermen of the city or borough aforesaid, should be three) should have the full power and authority of instituting, constituting, ordaining and making from time to time all reasonable statutes and ordinances whatsoever for the good rule and government of the burgesses and inhabitants of the city or borough aforesaid for the time being, and for declaring in what manner and order the said mayor, aldermen and burgesses of the city or borough aforesaid, and the artificers, inhabitants and resiants of that city or borough should themselves have, bear and use in their offices, mysteries, trades and businesses within that city or borough, and the limits thereof for the time being, and further for the more further good and public utility and government of that city or borough, and for the victualling of the same city or borough, and also for the better preservation, government, disposition, placing out and demising of the lands, tenements, possessions and hereditaments of the said mayor, aldermen and burgesses, and their successors, feoffees, grantees or assignees, or their future feoffees, grantees or assignees, and all other affairs and causes whatsoever touching or in any manner concerning the city or borough aforesaid, or the statutes, rights and interest of the same city or borough, which to them should seem to be good, wholesome, profitable, honest and necessary, according to their sound discretion, not being

being in any thing prejudicial to the biſhop of *Bath and Wells* and his ſucceſſors for the time being, or to his liberties, nor to the dean and chapter of the cathedral church of *Wells* or their ſucceſſors, or againſt the laws and cuſtoms of this realm of *England:* and that they and their ſucceſſors, by the mayor for the time being, and the aldermen and burgeſſes, being the common council of the ſaid city or borough, or the major part of them as aforeſaid, as often as they ſhould make ſuch laws, ſtatutes and ordinances, ſhould conſtitute, ordain and eſtabliſh in form aforeſaid ſuch pains, puniſhments, penalties and impriſonment of body, or by fine and amercement, or by either of them, to and upon all delinquents againſt ſuch laws, ſtatutes and ordinances, or any of them, or any ſuch, and which to the ſame mayor, aldermen and burgeſſes, being the common council of the city or borough aforeſaid for the time being, or to the major part of them as aforeſaid, ſhould ſeem to be good, neceſſary and requiſite, and ſhould and might be able to have and levy the ſame fines and amercements without the hindrance of the ſaid late king, his heirs and ſucceſſors; all and ſingular which laws, ſtatutes and ordinances ſo to be made as aforeſaid, the ſaid late king willed to be obſerved, under the pains in the ſame to be contained; nevertheleſs ſo that ſuch laws, ſtatutes and ordinances ſhould not be repugnant nor contrary to the laws or ſtatutes of this realm of *England*, nor in any manner prejudicial to the biſhop of *Bath and Wells* and his ſucceſſors, nor to the prejudice of the ſaid dean and chapter of the cathedral church of *Wells* aforeſaid: and furthermore the ſame late king willed, and by his ſame letters patent for himſelf, his heirs and ſucceſſors, granted to the aforeſaid mayor, aldermen and burgeſſes of the city or borough of *Wells* aforeſaid, and their ſucceſſors, that for ever for the then future there ſhould and might be in the city or borough aforeſaid one of the more honeſt and diſcreet men of that city or borough, choſen from time to time in the form in the ſame letters patent of the ſaid late king therein after mentioned, who ſhould be, and ſhould be named the mayor of that city or borough, and that likewiſe there ſhould and might be then for the future for ever within that city or borough ſeven of the more honeſt and diſcreet men of the ſame city or borough, choſen from time to time, according to the ordinances in the ſame letters patent of the ſame late king within ſpecified, who ſhould be, and ſhould be named aldermen of that city or borough; and that likewiſe there ſhould and might be for ever within the city or borough aforeſaid ſixteen of the more honeſt and diſcreet men of that city or borough, named from time to time, in the form in the ſame letters patent of the ſaid late

king therein mentioned, who should be, and should be named the capital burgesses of the city or borough aforesaid, as by the same letters patent under the great seal of the said late king *Charles* the second (among other things) more fully appears. And they the said jurors further upon their oath say, that after the making of the letters patent last mentioned, some men being members of the old corporation first above mentioned by the letters patent aforesaid last mentioned, were made members of the new corporation last mentioned; and other men who had not been members of the old corporation aforesaid, were made members of the new corporation aforesaid; and that one *John Day* being named a member of the new corporation aforesaid by the said letters patent last mentioned, afterwards and before the making of the said writing obligatory was chosen and made mayor of the city or borough aforesaid by pretext of the letters patent last mentioned; and that the said *John Day* so as aforesaid being mayor by pretext of the letters patent last mentioned and 13 members of the corporation aforesaid, (the same 13 members being the greater number and part of the corporation aforesaid) caused the said common seal of the corporation of the city or borough of *Wells* aforesaid in the county of *Somerset* aforesaid to be put to the writing obligatory within mentioned on the day and in the year within written, the same *John Day* not being at any time a member of the old corporation: but whether upon the whole matter aforesaid by the jurors aforesaid in form aforesaid found it shall seem to the justices and court here that the writing obligatory within written be the deed of the mayor, masters and burgesses of the city or borough of *Wells* within mentioned, or not, the jurors aforesaid are wholly ignorant, and thereupon pray the advice of the justices and court here, *&c.* and if upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, it shall seem to the justices and court here that the writing obligatory within written be the deed of the within named mayor, masters and burgesses of the city or borough of *Wells* within written, then the jurors aforesaid say upon their oath, that the writing obligatory within written is the deed of them the said mayor, masters and burgesses of the city or borough of *Wells* within mentioned, in manner and form as the within named *Joseph Knight* and *Philippa* have thereupon within declared against them; and then they assess the damages of them the said *Joseph* and *Philippa*, by reason of the detaining of the debt within written, besides their costs and charges by them laid out about their suit in this behalf, to two pence, and for those costs and charges to forty shillings: And if upon the whole matter aforesaid, by the

Further finding of the jury.

the jurors aforesaid in form aforesaid found, it shall seem to the justices and court here that the writing obligatory aforesaid be not the deed of the within named mayor, masters and burgesses of the city or borough of *Wells* within mentioned, then the jurors aforesaid further say upon their oath, that the said writing obligatory within written is not the deed of them the said mayor, masters and burgesses of the city or borough of *Wells* within named, in manner and form as they the said mayor, masters and burgesses of the city or borough of *Wells*, have within thereupon in pleading alledged: and because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day is given to the parties aforesaid here until from the day of Saint *Michael* in three weeks, for hearing their judgment thereupon, for that they the said justices here are not yet, &c. At which day here come as well the said *Joseph* and *Philippa* as the said mayor, masters and burgesses by their attornies aforesaid: and because the justices here will further advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the parties aforesaid here until in eight days of Saint *Hilary*, for hearing their judgment thereupon, for that the said justices are not, &c. (So enter the like continuances (by *Curia advisare vult)* until the term wherein judgment is given, and then enter the judgment as it shall happen to be,) which in this was for the defendants.

Trinity *Term in the third Year of the Reign of King* William *the Third.* Roll 684.

Bellasyse *and* Burbridge. 1 Ld. Raym. 170.

Action on the stat. 2 W. & M. for rescuing a distress for rent.

Nottinghamshire, (to wit) RICHARD *Burbridge* late of *Mansfield* in the county aforesaid, mercer, *Luke Martin* late of *Newark upon Trent* in the county aforesaid, innholder, *Robert Wilde* late of *Newark upon Trent* in the county aforesaid, cordwainer, and *Thomas Colgrave* late of *Winthorpe* in the county aforesaid, labourer, were attached to answer to Sir *Rowland Bellasyse*, knight of the *Bath*, of a plea of trespass upon the case, &c. And whereupon the said *Rowland* by *Samuel Mottram* his attorney complains, that whereas on the 20th day of *March* in the year of our Lord 1692, at *Holme* in the county aforesaid, he demised, granted and to farm to one *Edward Robinson* one messuage, two

 crofts,

crofts, one close of land called *Sandhill Close*, six acres of meadow, and one other close called *Barn Close*, and six cow-gates in the upper pasture, with the appurtenances, situate, lying and being at *Holme* aforesaid, and *Northmuskam* and *Bathley* in the county aforesaid; to have and to hold the tenements aforesaid, with the appurtenances, to the said *Edward Robinson*, from the feast of the annunciation of the blessed virgin *Mary* then next following for one year then next to come, and so from year to year, so long as both parties should please; yielding and paying therefore yearly and every year wherein the said *Edward* should have and occupy the tenements aforesaid, with the appurtenances by virtue of that demise 12 *l.* and 11 *s.* at the feasts of Saint *Michael* the archangel, and the annunciation of the blessed virgin *Mary*, by equal portions: by virtue of which said demise the said *Edward* entered into the said demised premisses with the appurtenances, and was possessed thereof; and being so possessed thereof, and the said demise being in full force, he the said *Rowland* on the 20th day of *December* in the year of our Lord 1694, in and upon the said demised premisses took and seized three cows, one steer, five quarters of barley and five quarters of wheat, in the name of a distress, for 18 *l.* 16 *s.* 6 *d.* of the rent aforesaid, for one year and an half of an year, ended at the feast of Saint *Michael* the archangel then last past, being then due and in arrear, and the grain aforesaid in the name and nature of a distress for the said rent so being due and in arrear detained in a barn, parcel of the said demised premisses, as impounded, by shutting and locking the doors thereof with the same grain therein, and that grain so further to detain; and afterwards and after the appraisement of the same, according to the form of the statute of the parliament of the lord the now king and lady *Mary* late queen of *England*, in such case lately made and provided, would have sold it: nevertheless the said *Richard*, *Luke*, *Robert* and *Thomas*, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Rowland* in this behalf afterwards, to wit, on the 26th day of *December* in the year of our Lord 1694, at *Holme* aforesaid, and within the time in which the grain aforesaid remained in the said barn under the said distress so impounded, not sold nor replevied, with force and arms rescued, took and carried away the said grain from the said barn, against the form of the statute aforesaid, to the damage of him the said *Rowland* of forty pounds; and thereupon he brings suit, &c.

The defendants pleaded not guilty.

Breedon *against* Gill. 1 Ld. Raym. 219.

England. BE it remembered, That on *Tuesday* on the morrow of *All Souls* in this same term before the lord the king at *Westminster* cometh here in court *Robert Breedon* in his proper person, and gives the court here to understand and be informed, That whereas by the laws and statutes of this kingdom of *England*, every issue joined in any cause depending in any court of the king within this realm, before any judge or judges, ought to be tried and determined by the testimony of *viva voce* witnesses produced in such court, and not by the reading of notes and minutes in writing, containing the testimony of any witness or witnesses taken in the same or in any other court, before the time of the trial of such issue, by any clerk of any court: and whereas a certain information lately, to wit, on the 18th day of *January* in the 7th year of the reign of the said lord the now king, according to the form of the statute in such case made and provided, was exhibited at *London* in the parish of ——— in the ward of ——— before the chief commissioners and governors of the revenues of the said lord the king of the excise appointed, according to the form of the statute in such case lately made and provided by one *Thomas Gill*, gent. who sued as well for the lord the king as for himself and the poor of the parish of Saint *Martin in the Fields* in the county of *Middlesex* against the said *Robert Breedon*, shewing that the said *Robert Breedon*, a common brewer, inhabiting and keeping a common brewhouse for brewing of beer and ale within the limits and jurisdiction of the general office of the excise, situate in *Broad-street*, *London*, that is to say, in the parish of Saint *Martin in the Fields* aforesaid, without first giving notice thereof at the said office of the excise, or to the commissioners or governors aforesaid, or to any of them within the limits and jurisdiction thereof, in and about the 16th day of *December* then last past did make use of and keep a private and concealed storehouse or room for laying beer and ale, or worts in casks, the same not being such as was openly known, discovered or made use of in his common usual brewhouse, to the damage and prejudice of the said lord the king in his revenue of the excise, which was contrary to the form of the statute in such case made and provided, and therefore he prayed the judgment of the said commissioners and governors by that information, as in and by the laws of the excise was devised and appointed; to which said information

 before

before the said commissioners and governors the said *Robert Breedon* afterwards, to wit, on the third day of *March* in the 8th year of the reign of the said lord the now king there appeared and pleaded that he was not guilty of the offence in the said information contained, and issue thereupon was there joined: and in such manner it was thereupon proceeded before the said commissioners and governors of the revenue of the said lord the king of the excise, that afterwards, to wit, on the said third day of *March* in the 8th year abovesaid, there the said commissioners and governors adjudged the said *Robert* to be guilty of the premisses objected to him by the information aforesaid, from which said judgment and determination, and for having relief in the premisses, the aforesaid *Robert Breedon* afterwards, to wit, on the 24th day of *April* in the 8th year of the reign of the said lord the now king, according to the form of the statute in such case lately made and provided, appealed to the commissioners of the appeals, by the laws and statutes of this realm of *England* in such case appointed; and the aforesaid *Thomas*, who sued as well for the said lord the king as for himself and the poor of the parish of Saint *Martin in the Fields* aforesaid, on the 30th day of *October* in the 8th year abovesaid, at *Westminster* in the county of *Middlesex*, before —— *Bodington*, —— *Lock* and —— *Chaloner*, esquires, commissioners of the appeals aforesaid, in due manner appointed for this purpose, according to the form of the statute in such case made and provided, to prove the said *Robert* guilty of the premisses in the said information specified, offered in evidence certain notes and minutes of the evidence given by *Thomas Everard*, *John Booth* and *Henry Caseburt*, then and now being in full life, and residing at the city of *London*, witnesses before the said chief commissioners and governors of the revenue, upon the trial of the said issue, before them then taken in writing by one *Edward Noell*, esq; clerk to the said chief commissioners and governors, without any lawful authority; and although he the said *Robert Breedon* then and there alledged and objected to the aforesaid commissioners of the appeals, that the said notes and minutes ought not by the laws to be read in evidence, and prayed that the said *Thomas Everard*, *John Booth* and *Henry Caseburt* being then and now in full life, as afore is set forth, might be produced to give *viva voce* evidence upon their oaths before the said commissioners of the appeals: but the said commissioners notwithstanding have adjudged that the said notes or minutes so as aforesaid by the said *Edward Noell* taken, without any lawful authority, should be read in evidence, contrary to the laws and statutes of this kingdom

of

of *England*; the aforesaid *Thomas Gill* the judgment so as aforesaid given by the chief commissioners and governors of the revenue of the said lord the king of the excise upon the evidence aforesaid, daily endeavours and contrives with all his power to procure to be confirmed, in contempt of the said lord the now king, and to the damage, prejudice and manifest grievance of him the said *Robert Breedon*, and contrary to the law and custom of this kingdom of *England*; and this he is ready to verify: whereupon he the said *Robert Breedon* prays the writ of the said lord the king of prohibition in this behalf, to be directed to the said commissioners of the appeals, to prohibit them, lest they admit the notes and minutes aforesaid in evidence in the cause aforesaid.

Hilary *Term in the eighth Year of King* William *the Third.* Roll 371.

Shalmer *against* Pulteney. 1 Ld. Raym. 276.

Cooke.

Middlesex, (to wit) GRACE *Pulteney*, widow, was summoned to answer *Richard Shalmer*, gent. of a plea that she permit him to pull down certain buildings in the parish of Saint *Martin in the Fields*, which *James Hulker* now deceased lately unjustly and without judgment there built in the freehold of the late *William Pulteney*, knt. deceased, and now of the said *Grace Pulteney*, to the nusance of the freehold of the said *William Shalmer* in the parish of Saint *Martin in the Fields* aforesaid, within fifty years now last past: and whereupon the said *Richard* by *Henry Dettin* his attorney complains, that whereas on the 7th day of *December* in the year of our Lord 1655, the said *William Pulteney* then esquire, afterwards knight, was seised in his demesne as of fee of and in three messuages, with the appurtenances, in the parish of Saint *Martin in the Fields* aforesaid in the county aforesaid, and also of and in a certain yard or vacant piece of ground to the same messuages on the east part thereof next and contiguously adjoining, in which said messuages, there are and then were eleven windows or lights, being upon the east-side of the same messuages towards the said yard or vacant piece of ground, and with the same messuages then used and enjoyed, that is to say, three windows or lights in one of the said messuages,

[...]ings.

three

three windows or lights in one other of the ſaid meſſuages, and five windows or lights in the third of the ſaid meſſuages, through which ſaid windows or lights light then came in to the ſaid three meſſuages, and uſed and ought to come in; and the ſaid *William* being ſo ſeiſed of the three meſſuages, with the windows or lights aforeſaid, and of the ſaid yard or vacant piece of ground aforeſaid, as before is ſet forth, on the ſame 7th day of *December* in the year of our Lord 1655 aforeſaid, at the pariſh aforeſaid, granted to one *John Shalmer*, the father of the ſaid *Richard*, among other things, the ſaid three meſſuages, together with all eaſements, profits, commodities and appurtenances whatſoever to the ſaid meſſuages belonging or in any manner appertaining, or with them employed, uſed or enjoyed as part, parcel or members thereof, or of any part thereof; To have and to hold to the ſaid *John Shalmer* and his heirs, to the uſe of the ſaid *John* and his heirs: by virtue whereof the ſaid *John* of the aforeſaid three meſſuages, together with the windows or lights aforeſaid, was ſeiſed in his demeſne as of fee; and being ſo ſeiſed thereof, the aforeſaid *John* afterwards, to wit, on the tenth day of *February* in the year of our Lord 1659, at the pariſh aforeſaid died, after whoſe death the ſaid three meſſuages, with the windows or lights aforeſaid, deſcended to the aforeſaid *Richard*, as the ſon and heir of the ſaid *John*, by which he the ſaid *Richard* afterwards, to wit, the ſame day and year entered into the ſame meſſuages, with the appurtenances, and of the ſame three meſſuages, with the windows or lights aforeſaid, was ſeiſed in his demeſne as of fee; and the ſaid *Richard* being ſo ſeiſed of the three meſſuages aforeſaid, together with the windows or lights aforeſaid, the aforeſaid *James Hulker*, now deceaſed, on the firſt day of *June* in the fourth year of the reign of the lord *James* the ſecond, late king of *England*, &c. unjuſtly and without judgment built upon the ſaid yard or vacant piece of ground aforeſaid, then being the freehold of the aforeſaid *William Pulteney* then knight, and now of the aforeſaid *Grace Pulteney*, the ſaid *James Hulker* being tenant of the ſame yard or vacant piece of ground for a term of years, certain buildings next to, and ſo near the ſaid windows or lights that the ſaid windows or lights were then wholly obſtructed and ſtopped up, and are yet obſtructed and ſtopped up, to the nuſance of the ſaid freehold of the ſaid *Richard*: and although the ſaid *Richard* hath often requeſted the ſaid *Grace Pulteney* that ſhe would permit him the ſaid *Richard* to pull down the aforeſaid buildings ſo built to the nuſance of the freehold of him the ſaid *Richard*, in manner aforeſaid, yet the

ſaid

said *Grace Pulteney* hath not hitherto permitted him the said *Richard* to pull down the same buildings, nor yet permitteth, unjustly, to the damage of him the said *Richard* of 500*l.* and thereupon he brings suit, *&c.*

Plea in abatement, for that the writ doth not shew the nature and number of the buildings.

And the said *Grace* by *John Tisser* her attorney comes and defends the force and injury when, *&c.* and prays judgment of the writ aforesaid, because he saith, that where by that writ it is said that the said *Grace* should permit the said *Richard* to pull down certain buildings in the parish of Saint *Martin in the Fields*, that writ in this case is altogether uncertain, in not shewing the nature or number of the same buildings, whereupon a certain judgment may be given thereof; and also in this, that where by the said writ it is supposed that one *James Hulker* built the said buildings in the freehold of the said *William Pulteney* within fifty years now last past, there is not had any such writ formed in the book of the register; and this she is ready to verify: wherefore she prays judgment of the writ, *&c.*

Demurrer.

And the said *Richard* saith, that he to the plea aforesaid by her the said *Grace* pleaded in abatement of the writ in manner and form aforesaid hath no necessity nor is bound by the law of the land to answer, whereupon he prays judgment, and that his said writ may be adjudged good, and that the nusance aforesaid may be removed, *&c.*

Joinder in demurrer.

And the said *Grace*, for that she hath above alledged sufficient matter in law to abate the writ aforesaid, which she is ready to verify; which said matter he the said *Richard* doth not deny, nor in any manner answer thereunto, but wholly refuses to admit that averment, as before prays judgment of the said writ, *&c.* And because the justices here will advise themselves of and concerning the premises before they give judgment thereupon, day is given to the parties aforesaid here until on the morrow of the ascension of our Lord, to hear their judgment thereupon, for that the said justices here are not thereof yet, *&c.*

Easter *Term in the tenth Year of King* William *the Third.*

Osborne *against* Poole. 1 Ld. Raym. 236.

Tempest.

Suggestion for a prohibition to the court of arches for words, in a libel commenced in the bishop of *Litchfield*'s court, and removed to the arches.

England, (to wit) BE it remembered, that on the 11th day of *May* in this same term here cometh into court *Edward Osborne* by *Charles Hope* his attorney, and gives the court here to understand and be informed, that Sir *Richard Raines*, knt. doctor of laws, principal official of the consistory court of the bishop of *Litchfield and Coventry*, contriving to aggrieve, oppress and tire out him the said *Edward*, contrary to the due form of law of this kingdom of *England*, and to draw him to other trial in the court christian, him the said *Edward*, by colour of his office, at the promotion of *Barnabas Poole*, clerk, rector of the rectory and parish church of *Brailesford*, for a certain pretended cause of contempt, scandal and defamation of the aforesaid *Barnabas*, hath lately drawn into plea, by craftily and subtilly articling and objecting in the said court christian, before him the said official, that he the said *Edward* in the months of *March*, *April*, *May*, *June*, *July*, *August*, *September*, *October*, *November* and *December*, in the year of our Lord 1696, within the parish of *Brailesford* aforesaid, falsly and maliciously, to the contempt, disesteem and scandal as well of his person as of his function, reproached, vilified, publickly defamed and grievously affected him the said *Barnabas* by scandalous words, and spoke the following *English* words, or words to the like effect, to him the said *Barnabas*, (that is to say) *thou or you* (meaning and imagining the said *Barnabas*) *art or are a pitiful, pimping rascal*, with others such base words, as by a true copy of the said articles brought here into court more fully appears: and the aforesaid *Edward* gives the court here to understand, that the cause of speaking the words aforesaid of the said *Barnabas* was, because he the said *Barnabas* at the time of speaking the words aforesaid in the articles aforesaid mentioned, spoke of the said *Edward* these *English* words following, (that is to say) *that he* (meaning him the said *Edward*) *was a beggar and was going to run his country*; *and that if he* (meaning himself the said *Barnabas*) *could but ruin the said* Edward Osborne, *he* (meaning again himself

himself the said *Barnabas*) *should have his end*; *and that he* (meaning again him the said *Edward*) *was used to steal his neighbour's ducks and hens*, and thereby very much irritated and put him the said *Edward* into a passion; and thereupon the said *Edward* in such his passion spoke the *English* words aforesaid in the said articles mentioned, without any malice or intention to defame him the said *Barnabas* in his person or function; which said cause of speaking the said words he the said *Edward* in pleading hath alledged in the said court christian: nevertheless the said spiritual judge, then being in the said court christian, wholly refused to receive the same allegation, but hath unjustly threatened to proceed to a sentence to condemn him the said *Edward* of and upon the premisses, and to pronounce ecclesiastical censures against him: whereupon afterwards and before any sentence against him the said *Edward* was read or pronounced, or any taxation of the expences of the suit aforesaid was made or had, the aforesaid business of complaint against him the said *Edward*, at the promotion of the said *Barnabas*, of and upon the articles aforesaid, so as before is set forth, moved and prosecuted, by virtue of a certain appeal of him the said *Edward* in that behalf had and made, was duly removed and transmitted from the said court christian, before the said principal official, into another court christian, before the venerable and excellent man *George Oxenden*, doctor of laws, dean or official of the prerogative court of *Canterbury* of the arches, *London*, or other president of the same court, and in the same court of arches yet dependeth: and the same official of the said court of arches, by colour of his office, at the promotion of the said *Barnabas*, in the same court of arches prosecuting the said appeal, hath further thereupon drawn into plea and prosecuted there, and yet prosecutes him the said *Edward* of and for the offence, injury and ill behaviour aforesaid, in the articles aforesaid above specified by him the said *Edward* supposed to be done; and hath unjustly bound him the said *Edward* to answer in the said court of arches before him of and upon the articles aforesaid, upon which the said *Edward* in the same court of arches in pleading hath alledged the same matter, or cause of speaking the said words in the articles aforesaid mentioned, which he the said *Edward* in the said court christian of *Litchfield and Coventry* had alledged, as is above-mentioned: nevertheless the said official of the said court of arches then being in the same court likewise wholly refused to receive the same allegation, but daily threatens to condemn him the said *Edward* of and upon the premisses, and to pronounce ecclesiastical censures against him, in contempt

contempt of the lord the now king, and againſt the laws and cuſtom of this realm of *England*, and to the great damage, prejudice, impoveriſhing and manifeſt grievance of him the ſaid *Edward*; and this the ſaid *Edward* is ready to verify: whereupon he the ſaid *Edward*, moſt humbly imploring the aid and liberality of the court of the lord the king now here, prays remedy, and the writ of the ſaid lord the now king of prohibition, to be directed to the ſaid ſpiritual judge or official of the aforeſaid court of arches, or other competent judge whatſoever in this behalf, to prohibit him that he do not further hold plea before him in any manner touching the premiſſes aforeſaid, &c.

Trinity *Term in the ninth Year of King* William *the Third.* Roll 1945.

Studholme and his wife, executrix of Moriſon, *againſt* Mandall. 1 Ld. Raym. 279.

Debt upon a bond made to the teſtator.

Cumberland, (to wit) *JOHN Mandall* late of *Boltongate* in the county aforeſaid, yeoman, otherwiſe called *John Mandall* of *Highhall* in the county of *Cumberland*, miller, was ſummoned to anſwer *Richard Studholme* the younger, gent. and *Judith* his wife, executrix of the will of *Richard Moriſon* deceaſed, of a plea that he render to them one hundred pounds of lawful money of *England*, which he unjuſtly detains from them; and whereupon they the ſaid *Richard* and *Judith* by *William Horſley* their attorney ſay, that whereas the ſaid *John* on the 25th day of *July* in the 34th year of the reign of the lord *Charles* the ſecond, late king of *England*, &c. at *Wigton* in the county aforeſaid, by his certain writing obligatory granted himſelf to be bound to the ſaid *Richard Moriſon* in his life-time in the ſaid 100*l.* to be paid to the ſaid *Richard*, when he ſhould be thereunto requeſted: nevertheleſs the ſaid *John*, although often requeſted, hath not rendered the ſaid 100*l.* to the ſaid *Richard* in his life-time, or to the ſaid *Judith* after the death of him the ſaid *Richard Moriſon* while ſhe was ſole, or to them the ſaid *Richard Studholme* and *Judith* after the eſpouſals between them celebrated, but to render the ſame to them, or either of them, hath denied, and yet doth deny to render the ſame to the ſaid *Richard Studholme* and *Judith*, and yet unjuſtly detains the ſame, whereupon they ſay that they are injured, and have damage to the value of 40*l.* and thereupon they

bring suit, &c. And they bring here into court as well the writing aforesaid, which testifies the said debt in form aforesaid, the date whereof is the day and year abovesaid, as the letters testamentary of the said *Richard Morison*, by which it sufficiently appears to the court here that the said *Judith* is executrix of the will aforesaid, and to have the administration thereupon, &c.

And the aforesaid *John Mandall* by *John Pattison* his attorney comes and defends the force and injury when, &c. and prays *Oyer* of the writing aforesaid, and it is read to him; he also prays *Oyer* of the condition of the said writing, and it is read to him in these words, (to wit) The condition of this obligation is such, that if the above-bounden *John Mandall*, his executors, administrators and assigns, and every of them, do from time to time, and at all times hereafter, well and truly observe, perform, fulfil and keep all and singular covenants, promises, grants, articles and agreements contained, specified and declared, in one pair of indentures bearing even date with these presents, touching and concerning one milne called *Highhall Milne*, made between the above-named *Richard Morison* of the one part, and the above-bounden *John Mandall* of the other part, which on the part and behalf of the said *John Mandall*, his executors, administrators and assigns, are or ought to be observed, performed, fulfilled and kept, according to the true intent and meaning of the said indentures, that then this obligation to be void, or else to remain in force with effect of law; which being read and heard, he the said *John Mandall* saith, that the said *Richard Studholme* and *Judith* his wife ought not to have their said action against him, because he saith, that the indenture aforesaid in the said condition above-mentioned was made at *Wigton* aforesaid on the said 25th day of *July* in the 34th year of the reign of the said late king *Charles* the second abovesaid, between the said *Richard Morison*, by the name of *Richard Morison* of *Cockermouth* in the county of *Cumberland*, gent. of the one part, and the aforesaid *John Mandall*, by the name of *John Mandall* of *Highhall* in the county aforesaid, miller, of the other part, the counterpart whereof, sealed with the seal of him the said *Richard Morison*, he the said *John Mandall* brings here into court, bearing date the same day and year: by which said indenture the said *Richard Morison*, for and in consideration of the rent and covenants in the same indenture therein after expressed, and also for divers other reasonable considerations him thereunto moving, had demised, granted and to farm letten, and by the same indenture for himself, his executors and administrators, did demise, grant and to farm let unto the

Plea in bar.

Oyer of condition for the performance of covenants in an indenture between the testator and defendant.

the ſaid *John Mandall* all that his water-griſt mill, commonly called or known by the name of the *Highhall Mill*, with the appurtenances, ſituate and being in the pariſh of *Weſtward* within the county aforeſaid, then in the tenure or occupation of the ſaid *John Mandall*; and alſo all toll, benefit and cuſtom for grinding of corn and grain whatſoever, and alſo all and ſingular headwares, mill-ponds, mill-pools, mill-dams, ſtanks, banks, ponds, ſtreams, water, watercourſes, ways, paths, paſſages, eaſements, profits, commodities, advantages, emoluments and appurtenances whatſoever to the ſaid mill belonging or in any manner appertaining; to have and to hold the ſaid demiſed premiſſes, with the appurtenances, to the ſaid *John Mandall*, his executors, adminiſtrators and aſſigns, from the ſecond day of *February* then laſt paſt before the date of the ſame indentnre, for and during and unto the full end and term of 13 years, from thence next following fully to be compleat and ended; yielding and paying therefore yearly during the ſaid term the yearly rent or ſum of 8 *l.* 5 *s.* of lawful money of *England*, at two days of payment in the year, by even and equal portions, that is to ſay, upon the firſt day of *Auguſt* and upon the ſecond day of *February*: and the ſaid *John Mandall* for himſelf, his executors, adminiſtrators and aſſigns, did covenant, promiſe and agree to and with him the ſaid *Richard Moriſon*, his heirs, executors, adminiſtrators and aſſigns, that he the ſaid *John Mandall*, his executors, adminiſtrators and aſſigns, would well and ſufficiently find and provide all neceſſary repairs whatſoever which ſhould happen about the ſaid mill during the ſaid term, (except wood for the ſame, which the ſaid *Richard Moriſon* was to find, if the ſame could be got, within the liberties of *Highhall* demeſne or farmhold): and the ſaid *John Mandall* did covenant and promiſe to leave the ſaid mill in as good repair, with all the materials thereunto belonging, at the expiration of the ſaid leaſe, as when he entered the ſame, to be viewed by four honeſt neighbours, equally to be choſen between them. And the ſaid *John Mandall* did covenant and promiſe for himſelf, his executors and adminiſtrators, to leave the mill ſtones upon the ſaid mill, at the expiration of the aforeſaid term, as good as when he entered, or elſe to give ſatisfaction in money for as much as they ſhould be worſe, according to the diſcretion of the parties that viewed the ſame at the firſt, as by the ſame indenture, amongſt other things, more fully appears; which are all and ſingular the things in the ſaid indenture contained, on the part of him the ſaid *John* to be obſerved, performed, fulfilled or kept. And the ſaid *John* further ſaith, that he at the end and expiration of the term aforeſaid

The covenant on which the main queſtion in the cauſe aroſe.

Averment of the performance of ſaid covenant.

aforesaid left two mill-stones in and upon the said mill, and that the parties who first viewed the mill-stones which were upon the said mill at the time of the entry of him the said *John*, into that mill have not hitherto agreed how much the said two mill-stones by him left, at the expiration of the said term, were worse than the said mill-stones in and upon the said mill at the said time of the entry of him the said *John* thereupon. And the said *John* further saith, that he hath well and truly observed, performed, fulfilled and kept all and singular other the covenants, promises, grants and agreements contained, specified and declared in the said indenture, on the part of him the said *John Mandall*, to be observed, performed, fulfilled and kept, according to the form and effect of the said indenture; and this he is ready to verify: whereupon he prays judgment if the said *Richard Studholme* and *Judith* ought to have their said action against him, &c.

General performance as to the other covenants.

And the aforesaid *Richard Studholme* and *Judith* his wife pray *Oyer* of the indenture aforesaid; and it is read to them in these words, (that is to say) This indenture made the 25th day of *July* in the 34th year of the reign of our sovereign lord *Charles* the second, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. *Annoq; Domini* 1682, between *Richard Morison* of *Cockermouth* in the county of *Cumberland*, gent. of the one part, and *John Mandall* of *Highhall* in the county aforesaid, miller, of the other part, witnesseth, that the said *Richard Morison*, for and in consideration of the rent and covenants herein after in these presents expressed, and also for divers other reasonable considerations him thereunto moving, hath demised, granted and unto farm letten, and by these presents doth for himself, his executors and administrators, demise, grant and to farm let unto the said *John Mandall* all that his water-grist-mill, commonly called or known by the name of *Highhall Mill*, with the appurtenances, situate and being in the parish of *Westward* within the county aforesaid, now in the tenure or occupation of the said *John Mandall*, and also all toll, benefit and custom for grinding of corn and grain whatsoever, and also all and singular headwares, mill-ponds, mill-pools, mill-dams, stanks, banks, ponds, streams, water, watercourses, ways, paths, passages, easements, profits, commodities, advantages, emoluments and appurtenances whatsoever, to the said mill belonging or in any wise appertaining; to have and to hold the said mill with the appurtenances, and all toll, benefit and custom of grinding of all corn and grain whatsoever, with all and singular headwares, mill-ponds, mill-pools, mill-dams, stanks, banks, ponds,

Replication. *Oyer* of the indenture.

ponds, ſtreams, water, watercourſes, ways, paths, paſſages, eaſements, profits, commodities, advantages, emoluments, and appurtenances whatſoever herein before mentioned, unto the ſaid *John Mandall*, his executors, adminiſtrators and aſſigns, from the ſecond day of *February* laſt paſt before the date hereof, for and during and unto the full end and term of 13 years from thence next enſuing and fully to be compleat and ended; yielding and paying therefore yearly during the ſaid term the yearly rent or ſum of 8 *l.* and 5 *s.* lawful *Engliſh* money, at two days of payment in the year, by even and equal portions, *viz.* upon the firſt day of *Auguſt* and upon the ſecond day of *February*. And the ſaid *John Mandall* doth for himſelf, his executors and adminiſtrators, covenant, promiſe and grant to and with him the ſaid *Richard Moriſon*, his heirs, executors, adminiſtrators and aſſigns, that he the ſaid *John Mandall* ſhall and will well and ſufficiently find and provide all neceſſary repairs whatſoever which ſhall happen to be about the ſaid mill during the aforeſaid term, except wood for the ſame, which the ſaid *Richard Moriſon* is to find, if the ſame can be got, within the liberties of *Highhall* demeſne or farmhold. And the ſaid *John Mandall* doth covenant and promiſe to have the ſaid mill in as good repair with all the materials thereunto belonging, at the expiration of the ſaid leaſe, as when he entered the ſame, to be viewed by four honeſt neighbours, equally choſen between them. And the ſaid *John Mandall*, his executors, adminiſtrators and aſſigns, is to have one cow-graſs in ſummer, and one horſe-graſs in winter yearly during the ſaid term within the farmhold of the ſaid *Highhall*, the cow-graſs in ſummer to be in woodcloſes, fog-cloſes and new riving, or in ſome of them, and the horſe to be wintered in all or ſome of the ſaid cloſes. And it is further agreed upon by theſe preſents, that he the ſaid *John Mandall*, his executors, adminiſtrators and aſſigns, for and under the payment of the ſaid yearly rent of 8 *l.* and 5 *s.* above by theſe preſents reſerved in manner and form aforeſaid, and performing, fulfilling and keeping all and ſingular the covenants, grants, articles and agreements before in theſe preſents contained, which on his and their parts are and ought to be obſerved, performed, fulfilled and kept, ſhall and may lawfully, peaceably and quietly have, hold, occupy, poſſeſs and enjoy all and ſingular the ſaid demiſed premiſſes, and every part and parcel thereof, with their and every of their appurtenances, without lawful let, ſuit, trouble, eviction, ejection, moleſtation or interruption whatſoever of him the ſaid *Richard Moriſon*, his executors, adminiſtrators

ministrators or assigns, or any of them, during the aforesaid term. • And the said *John Mandall* doth covenant and promise for himself, his executors and administrators, to leave mill-stones upon the said mill, at the expiration of the aforesaid term, as good as when he entered, or else to give satisfaction in money for as much they shall be worse, according to the discretion of the parties that viewed the same at the first. In witness whereof the parties abovesaid interchangeably have hereunto set their hands and seals the day and year first above-written. Memorandum, it is agreed unto by the said parties before the sealing hereof, that whereas the stones that was upon the said mill was then valued at three pounds, if the said *John Mandall* leaves stones upon the said mill at the end of the said lease better than the said sum, then he to have the overplus returned; which being read and heard, they the said *Richard Studholme* and *Judith* his wife say, that they by any thing before alledged ought not to be barred from having their said action thereof against the said *John Mandall*, because they say, that at the time of the making of the said indenture, and also at the said time when he the said *John Mandall* entered upon the said mill to him demised, as before is set forth, to wit, on the 26th day of *July* in the 34th year of the reign of the said late king *Charles* the second, there were two mill-stones of the value of 3*l*. remaining and being in the same mill for the use of that mill, and that at the end and expiration of the term of years abovesaid in the indenture afore-said above-mentioned, the said *John Mandall* did not leave mill-stones in or upon the mill aforesaid as good as the said two mill-stones were at the said time of the entry of him the said *John Mandall* upon the mill aforesaid to him demised, as before is set forth, nor hath given any satisfaction in money to any person whatsoever for so much as the mill-stones by him the said *John Mandall* in the same mill left were worse than the said two mill-stones being in the same mill at the time of the said entry of him the said *John Mandall*; and this they the said *Richard Studholme* and *Judith* his wife are ready to verify: whereupon they pray judgment and their debt aforesaid, together with their damages by reason of the detaining of that debt, to be adjudged to them, &c.

Breach assigned.

And the said *John Mandall* as before saith that he at the end and expiration of the term aforesaid left two mill-stones in and upon the said mill, and that the parties who first viewed the mill-stones which were upon the said mill at the time of the entry of him the said *John* into that mill have not hitherto agreed how much the said two mill-stones by him left at the expiration of the said term, as afore is set forth, were

Rejoinder, which is no more than a repetition of the bar.

were worse than the said mill-stones in and upon the said mill at the said time of the entry of him the said *John* thereupon; and this he is ready to verify: whereupon as before he prays judgment, and that the said *Richard* and *Judith* may be barred from having their said action against him, *&c.*

Demurrer, and joinder in demurrer.

Trinity *Term in the eighth Year of the Reign of King* William *the Third.* Roll 1453.

Bates, Widow, *against* Bates. 1 Ld. Raym. 326.

Count in dower.

Northumberland, (to wit) ANN *Bates,* widow who was the wife of *Ralph Bates,* esq; by *Edward Hansley* her attorney demands against *Thomas Bates,* gent. the third part of twenty messuages, two gardens, 800 acres of land, 800 acres of meadow, 1000 acres of pasture and 1000 acres of moor, with the appurtenances in *Hertford, East Harford, Halliwell, Millburne,* and the parishes of *Woodborne Garsden* and *Point* island, as her dower of the endowment of the aforesaid *Ralph,* sometime her husband, whereof she nothing hath, *&c.*

Tenant by guardian pleads *ne unques seisie que dower.*

And the said *Thomas* by *Robert Bewicke.* esq; who is admitted by the king's court here to prosecute for the said *Thomas* who is within age, as the guardian of him the said *Thomas,* comes and says, that the aforesaid *Ann* ought not to have her dower of the tenements aforesaid with the appurtenances of the endowment of the said *Ralph,* sometime her husband, because he says that the said *Ralph* sometime her husband, neither on the day when he married the aforesaid *Ann,* nor at any time afterwards, was seised of the tenements aforesaid, with the appurtenances, whereof, *&c.* of such estate, so that the said *Ann* could be endowed thereof; and of this he puts himself upon the country, and the said *Ann* likewise: therefore the sheriff is commanded, that he cause to come here in three weeks from the day of the Holy *Trinity* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* because as well, *&c.* at which day the jury between the parties aforesaid of the plea aforesaid is respited thereupon between them here until this day, that is to say, from the day of St. *Michael* in three weeks then next following, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid by form of the statute, *&c.* shall before come on *Saturday* the 8th day of *August* next, past,

Issue to the country.

Venire awarded.

Nisi prius.

past, at the castle of *Newcastle upon Tine* in the county aforesaid. And now here at this day come as well the said *Ann* by her attorney aforesaid, as the said *Thomas* by his guardian aforesaid: and the said justices before whom at the assizes, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *Edward Ward*, knt. chief baron of the exchequer of the lord the king, and *John Turton*, knt. one of the justices of the lord the king, assigned to hold pleas before the king himself, justices of him the said lord the king, assigned to take the assizes in the county of *Northumberland* by form of the statute, &c. come as well the within named *Ann Bates* by her attorney within contained, as the within written *Thomas Bates* by his guardian within written; and the jurors of the jury, whereof mention is within made, being called, some of them, that is to say, *Francis Huntridge*, *Lionel Windship*, *John Hall*, *Gerard Browel*, *John Alder*, *Roger Snawden*, *Christopher Milburne* and *Thomas Armorer* come, and are sworn upon that jury. And because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, chosen by the sheriff of the county aforesaid, at the request of the said *Ann Bates*, and by command of the justices aforesaid, are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case made and provided; which said jurors so newly appointed, that is to say, *Cuthbert Heron*, *John Wade*, *Thomas Reanly* and *George Harle* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, together with the other jurors aforesaid before impanelled, as to 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor, with the appurtenances, in *Hartford*, *East Harford*, *Halliwell*, and the parishes of *Woodhorne* and *Garsden* within written, parcel of the tenements within specified, say upon their oath, that long before the espousals celebrated between the aforesaid *Richard Bates* and the said *Ann*, one *Ralph Bates*, esq: the father of him the said *Ralph Bates*, sometime her husband, &c. was seised of and in the aforesaid parcel of the tenements aforesaid with the appurtenances, in his demesne as of fee; and he the said *Ralph Bates* the father being so seised thereof, he the said *Ralph Bates* the father on the 23d day of *May* in the 29th year of the reign of the lord *Charles* the second, late king of *England*, &c. by a certain indenture made between him the said *Ralph Bates* the father and the within named *Ralph Bates*, the son of the said *Ralph* the father, by the names of *Ralph Bates* of *Halliwel* in the county of *Northumberland*, esq; and

The *postea*.

Tales.

Special verdict as to part.

That *R. R.* the father of the husband was seised in fee, &c.

Ralph Bates, the ſon and heir apparent of the ſaid *Ralph Bates* of the one part, and *Robert Bewicke*, eſq; and *Thomas Bewicke*, gent. by the names of *Robert Bewicke* of *Cloſehouſe* in the county of *Northumberland*, eſq; and *Thomas Bewicke* of the town and county of *Newcaſtle upon Tine*, gent. of the other part, ſealed with the ſeals of the aforeſaid *Ralph Bates* the father, and *Ralph Bates* the ſon, to the jury aforeſaid in evidence ſhewn, the date whereof is the day and year laſt aboveſaid, for and in conſideration of five ſhillings of lawful money of *England* to the ſaid *Ralph Bates* the father and *Ralph Bates* the ſon by the ſaid *Robert Bewicke* and *Thomas Bewicke* paid, bargained and ſold to the ſaid *Robert Bewicke* and *Thomas Bewicke* and their aſſigns, the aforeſaid parcel of the tenements aforeſaid, with the appurtenances, amongſt other things; and the ſaid *Ralph Bates* the ſon, by the ſame indenture confirmed the aforeſaid bargain and ſale; to have and to hold the aforeſaid parcel of the tenements aforeſaid, with the appurtenances, to the ſaid *Robert Bewicke* and *Thomas Bewicke* and their aſſigns, from the day next before the date of the indenture aforeſaid, for and during the term of one year then next following; by virtue of which ſaid bargain and ſale, and by force of the ſtatute in the parliament of the lord *Henry* the eighth, late king of *England*, holden in the 27th year of his reign, made and provided for transferring of uſes into poſſeſſion, the aforeſaid *Robert Bewicke* and *Thomas Bewicke* were poſſeſſed of the ſaid parcel of the tenements aforeſaid, with the appurtenances; and being ſo poſſeſſed thereof, and the ſaid *Ralph Bates* the father being ſeiſed in his demeſne as of fee of the reverſion thereof, he the ſaid *Ralph Bates* the father afterwards to wit, on the 24th day of *May* in the 29th year of the reign of the ſaid late king *Charles* the ſecond aboveſaid, by a certain other indenture made between them the ſaid *Ralph Bates* the father and *Ralph Bates* the ſon of the one part, and the aforeſaid *Robert Bewicke* and *Thomas Bewicke* of the other part, and ſealed with the ſeals of the ſaid *Ralph* and *Ralph* to the jurors in evidence ſhewn, the date whereof is the day and year laſt aboveſaid, for the conſiderations in the ſame indenture mentioned, granted and releaſed to the ſaid *Robert Bewicke* and *Thomas Bewicke* and their heirs, the aforeſaid parcel of the tenements aforeſaid, with the appurtenances, amongſt other things, and the reverſion thereof; and the ſaid *Ralph Bates* the ſon confirmed the ſaid grant and releaſe; to have and to hold to the aforeſaid *Robert Bewicke* and *Thomas Bewicke* and their heirs, to the uſes, intentions and purpoſes, and under the proviſoes and limitations in the ſame indenture laſt aboveſaid of and concerning the ſaid parcel of the tenements aforeſaid, with the appurtenances, limited,

mited, declared and expressed, the tenor of which said indenture follows in these words: This indenture made the 24th day of *May* in the 29th year of the reign of our sovereign lord *Charles* the second, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. between *Ralph Bates* of *Halliwell* in the county of *Northumberland*, esq; and *Ralph Bates*, son and heir apparent of the said *Ralph Bates*, of the one part, and *Robert Bewicke* of *Closehouse* in the county of *Northumberland*, esq; and *Thomas Bewicke* of the town and county of *Newcastle upon Tine*, gent. of the other part, witnesseth, that the said *Ralph Bates* the father and *Ralph Bates* the son, for and in consideration of the sum of five shillings of good and lawful money of *England*, to them in hand paid by the said *Robert Bewicke* and *Thomas Bewicke* before the sealing and delivery hereof, the receipt whereof they do hereby acknowledge, and for and in consideration of a marriage, by God's permission, to be shortly had and solemnized by and between the said *Ralph Bates* the son and *Margaret Bewicke*, daughter of *Thomas Bewicke* of *Closehouse* aforesaid, esq; and in consideration of a marriage portion to be paid by the said *Thomas Bewicke* the father, and for providing a competent jointure and maintenance for the said *Margaret*, in case she should survive the said *Ralph Bates* her intended husband, and for settling the lands, tenements and hereditaments hereafter mentioned, have given, granted, bargained and sold, released and confirmed, and by these presents do for them and their heirs give, grant, bargain and sell, release and confirm unto the said *Robert Bewicke* and *Thomas Bewicke*, their heirs and assigns, all and every the manors, lordships, demesnes, towns, townships, capital messuages, farmholds, lands, tenements and hereditaments of *Halliwell*, *Milburne* and *East Hertford*, with their and every of their rights, members and appurtenances, situate, lying and being in the said county of *Northumberland*, together with all messuages, houses, edifices, buildings, barns, byars, stables, gardens, orchards, mills, waters, watercourses, lands, meadows, pastures, commons, common of pasture, moors, wastes, warrens, rents, services, royalties, privileges, emoluments, profits, commodities, advantages and appurtenances whatsoever to the manors, lordships, demesnes, towns, townships, capital messuages, farmholds, lands, tenements, hereditaments and premisses, or any of them, or any part or parcel thereof belonging or in any wise appertaining, or now or at any time heretofore commonly used, occupied or enjoyed, reputed, taken or known as part, parcel or member thereof, or any part or parcel

 thereof,

thereof, and also all other the messuages, lands, tenements and hereditaments whatsoever of them the said *Ralph Bates* the father and *Ralph Bates* the son, or either of them, lying or being within the said county of *Northumberland*, and the reversion and reversions, remainder and remainders of all and singular the said premisses; to have and to hold all and every the said manors, lordships, demesnes, towns, townships, and capital messuages, farmholds, lands, tenements, hereditaments and premisses, and every part and parcel thereof, with their and every of their appurtenances to the said *Robert Bewicke* and *Thomas Bewicke* and their heirs, to the uses, intents and purposes, and under the provisoes and limitations hereafter mentioned, (that is to say) as for and concerning the manor, lordship, town, township, farmholds, lands, tenements and hereditaments of *Milburne* aforesaid, to the use and behoof of the said *Ralph Bates* the son, for and during the term of his natural life, without impeaching of or for any manner of waste; and from and after the death of the said *Ralph Bates* the son, then to the use and behoof of the said *Margaret Bewicke* his intended wife, for and in lieu of her jointure, and in full satisfaction of all her right and title of dower to all and every the lands and tenements whereof the said *Ralph Bates* shall be seised during the coverture between them, and after the death of the said *Margaret Bewicke*, to the use and behoof of the first son of the body of the said *Ralph Bates* the son upon the body of the said *Margaret Bewicke* his intended wife lawfully to be begotten, and to the heirs males of the body of such first son lawfully to be begotten; and in default of such issue, then to the use and behoof of the second son of the body of the said *Ralph Bates*, upon the body of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such second son lawfully to be begotten; and in default of such issue, then to the use and behoof of the third son of the body of the said *Ralph Bates* upon the body of the said *Margaret Bewicke* lawfully to be begotten, and to the heirs males of such third son lawfully to be begotten; and in default of such issue, then to the use and behoof of the fourth son of the body of the said *Ralph Bates* upon the body of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such fourth son lawfully to be begotten; and in default of such issue, then to the use and behoof of the fifth son of the body of the said *Ralph Bates* upon the body of the said *Margaret* lawfully to be begotten, and to the heirs males of the body of such fifth son, lawfully to be begotten; and in default of such issue, then to the use and behoof of the sixth son of the body of the said *Ralph Bates* upon the body

of

of the ſaid *Margaret* lawfully to be begotten, and to the heirs males of the body of ſuch ſixth ſon lawfully to be begotten; and in default of ſuch iſſue, then to the uſe and behoof of the ſeventh, eighth, ninth, tenth, eleventh and twelfth ſon, and all and every the other ſon and ſons of the body of the ſaid *Ralph Bates* the ſon upon the body of the ſaid *Margaret* lawfully to be begotten, ſeverally and reſpectively, and to the heirs males of the body of every ſuch ſeventh, eighth, ninth, tenth, eleventh and twelfth and every other ſon or ſons of the body of the ſaid *Ralph Bates* upon the body of the ſaid *Margaret* lawfully to be begotten, ſeverally and reſpectively, the elder and the heirs males of his body always to be preferred before the younger and the heirs males of his body, according to their ſeveral priority of birth and ſeniority of age reſpectively; and in default of ſuch iſſue, then to the uſe and behoof of the heirs males of the body of the ſaid *Ralph Bates* the ſon; and in default of ſuch iſſue, then to the uſe and behoof of the ſaid *Ralph Bates* the father and the heirs males of his body lawfully begotten or to be begotten; and in default of ſuch iſſue, then to the uſe and behoof of the right heirs of the ſaid *Ralph Bates* the ſon for ever; and as for and concerning the manors, lordſhips, town, townſhips, lands, tenements and hereditaments of *Halliwell* and *Eaſt Hartford* aforeſaid, to the uſe, intent and purpoſe that it ſhall and may be lawful to and for the ſaid *Ralph Bates* the father and *Margaret* his wife during their two natural lives, and the life of the longer liver of them, to have, take, perceive and receive out of the ſame the yearly ſum or rent of one hundred and twenty pounds of lawful money of *England*, at four days or times in the year, that is to ſay, the feaſt of Saint *Philip and Jacob*, commonly called *May-day*; the firſt day of *Auguſt*, commonly called *Lammas-day*; the feaſt of Saint *Martin* the biſhop in winter, commonly called *Martinmas-day*, and the ſecond day of *February*, commonly called *Candlemas-day*, by even and equal portions; the firſt payment thereof to begin at or upon the feaſt of Saint *Philip and Jacob*, commonly called *May-day* next enſuing the date hereof; and if it ſhall happen that the ſaid yearly rent or ſum of one hundred and twenty pounds, or any part or parcel thereof, ſhall be behind in arrear or unpaid by the ſpace of twenty days next after any of the ſaid feaſts or times whereon the ſame ought to be paid as aforeſaid, that then it ſhall and may be lawful to and for the ſaid *Ralph Bates* the father and *Margaret* his wife, and the longer liver of them, into the ſaid manors, lordſhips, towns, townſhips, lands, tenements and hereditaments of *Halliwell* and *Eaſt Hartford*, and every or any part or parcel of

of them, or either of them, to enter and diftrain, and the diftrefs and diftreffes there found to take, lead, drive and carry away, and the fame to hold, detain and impound, until the faid rent and arrearages thereof fhall be fully paid and fatisfied; and to the further ufe, intent and purpofe, that it fhall and may be lawful to and for *Mark Bates* fecond fon of the faid *Ralph Bates* the father, during his natural life, to have, hold, perceive and receive out of the faid manors, lordfhips, towns, townfhips, lands, tenements and hereditaments of *Eaft Hartford*, the yearly rent or fum of thirty pounds of lawful money of *England*, at two days and times in the year, (that is to fay) the firft day of *Auguft*, commonly called *Lammas-day*, the fecond day of *February*, commonly called *Candlemas-day*, by even and equal portions; the firft payment thereof to begin at or upon the firft day of *Auguft* next enfuing the date hereof; and if it fhall happen that the faid yearly rent or fum of thirty pounds, or any part or parcel thereof, fhall be behind in arrear or unpaid by the fpace of twenty days next after any of the faid feafts or times whereon the fame ought to be paid as aforefaid, that then it fhall and may be lawful to and for the faid *Mark Bates* into the faid manors, lordfhips, towns, townfhips, lands, tenements and hereditaments of *Eaft Hartford*, and every or any part or parcel thereof to enter and diftrain, and the diftrefs or diftreffes there found to take, lead, drive and carry away, and the fame to hold, detain and impound, until the faid rent of thirty pounds, and the arrearages thereof, be fully paid and fatisfied. And further as for and concerning the faid manor, lordfhip, town, townfhip, lands, tenements and hereditaments of *Halliwell* and *Eaft Hartford* fo charged as aforefaid, the fame fhall go and be to the ufe and behoof of the faid *Ralph Bates* the fon, for and during his natural life, without impeachment of or for any manner of wafte; and after his deceafe, to the ufe and behoof of the faid *Robert Bewicke* and *Thomas Bewicke* parties to thefe prefents their executors and adminiftrators for and during the time and times of ninety and nine years from thenceforth next enfuing fully to be compleat, ended and run: neverthelefs upon the truft, and fubject to the intents and purpofes hereafter in or by thefe prefents mentioned and declared; and from and after the expiration or other determination of the faid term of ninety and nine years, then to the ufe and behoof of the heirs males of the body of the faid *Ralph Bates* the fon lawfully begotten and to be begotten; and in default of fuch iffue, then to the ufe and behoof of the faid *Ralph Bates* the father lawfully begotten; and in default thereof, to the ufe of the right heirs of the faid *Ralph Bates* the fon for ever. And it is by

by these presents provided and declared, that the said term for ninety and nine years unto the said *Robert Bewicke* and *Thomas Bewicke* shall, and hereby is declared to be upon this trust and confidence, and to the intent and purpose, that in case the said *Ralph Bates* the son should die without issue male of his body lawfully begotten upon the body of the said *Margaret Bewicke* his intended wife, leaving one or more daughter or daughters between him and the said *Margaret*; or in case the said issue male of the said *Ralph* and *Margaret* shall fail in the life-time of such daughter or daughters, that then the said *Robert Bewicke* and *Thomas Bewicke* their executors, administrators or assigns, or some of them, shall levy and raise out of the clear rents, issues and profits of the said manors, lordships, towns, townships, lands, tenements and hereditaments of *Halliwell* and *East Hartford* aforesaid, the full and just sum of fifteen hundred pounds of good and lawful money of *England*, to be paid unto such daughter or daughters, and if more than one, to be equally divided amongst them: and also shall levy, raise and provide out of the said clear rents, issues and profits thereof, convenient and sufficient maintenance for such daughter or daughters according to their degree and quality, until the whole sum of fifteen hundred pounds shall be fully raised and levied: and if any of the said daughter or daughters shall die before she attain the full age of one and twenty years, or be married, that then the part or portion of each daughter so dying shall fall and be paid to the surviving daughter or daughters; and after the said sum of fifteen hundred pounds so raised and paid as aforesaid then the said term of ninety-nine years shall cease and determine: and the said *Ralph Bates* the father and *Ralph Bates* the son do for themselves, their heirs, executors and administrators and every of them, covenant, grant and agree to and with the said *Robert Bewicke* and *Thomas Bewicke*, their executors, administrators and assigns, and every of them, that all and every the said manors, lordships, towns, townships, lands, tenements and hereditaments above mentioned, shall remain, continue and be to the uses, intents and purposes above mentioned, and that the said manor, lordship, town, township, lands, tenements and hereditaments of *Milburne* limited in jointure to the said *Margaret Bewicke* intended wife of the said *Ralph Bates* the son as aforesaid, and every part and parcel thereof, shall remain, continue and be clear and free of or from all titles, charges and incumbrances whatsoever during the natural life of the said *Margaret Bewicke*; and the said *Ralph Bates* the father and *Ralph Bates* the son do for themselves, their heirs, executors, administrators and assigns severally covenant, grant

and

and agree to and with the ſaid *Robert Bewicke* and *Thomas Bewicke*, their executors, adminiſtrators and aſſigns, that the ſaid *Ralph Bates* the father and *Ralph Bates* the ſon, or the one of them, now are or is at the time of ſealing and delivery of theſe preſents lawfully and rightfully ſeiſed in their, or the one of their demeſne as of fee, of and in the ſaid manors, lordſhips, towns, townſhips, lands, tenements, hereditaments and premiſſes, of and in a good and abſolute eſtate in the law of fee-ſimple, and that they the ſaid *Ralph Bates* the father and *Ralph Bates* the ſon, or the one of them, now have or hath good power and authority in the law to grant the premiſſes above mentioned to the uſes, intents and purpoſes aforeſaid, and that the ſame are or ſhall be freed or otherwiſe well and ſufficiently ſaved harmleſs and indemniſied of and from all and all manner of incumbrances whatſoever committed, done or ſuffered by the ſaid *Ralph Bates* the father or *Ralph Bates* the ſon, or either of them; and that they the ſaid *Ralph Bates* the father and *Margaret* his wife, and *Ralph Bates* the ſon, and every other perſon or perſons lawfully claiming or to claim by, from or under them, or either or any of them, ſhall and will from time to time, and at all times hereafter within the ſpace of ſeven years next enſuing, upon the reaſonable requeſt of the ſaid *Robert Bewicke* and *Thomas Bewicke* their executors, adminiſtrators or aſſigns, and at the proper coſts and charges of the ſaid *Ralph Bates* the father and *Ralph Bates* the ſon, make, do, acknowledge, levy, ſuffer, perfect, finiſh, and execute, or cauſe to be made, done, acknowledged, levied, ſuffered, perfected, finiſhed and executed all and every ſuch further and other lawful and reaſonable act and acts, thing and things, conveyance and conveyances, aſſurance and aſſurances in the law whatſoever for the further, better and more perfect granting, conveying, aſſuring and ſecuring of the ſaid manors, lordſhips, towns, townſhips, lands, tenements, hereditaments and premiſſes, and every part and parcel thereof, to the uſes, intents and purpoſes aforeſaid, be it by deed or deeds, fine or fines with proclamations or without, recovery or recoveries with ſingle or double voucher or vouchers, or by all or any of the ſaid ways or means, or by any other ways or means whatſoever, as by the ſaid *Robert Bewicke* and *Thomas Bewicke*, their heirs or aſſigns, or any of them, or their or any of their council learned in the law, ſhall or may be reaſonably deviſed, adviſed or required. In witneſs whereof the ſaid parties to theſe preſent indentures interchangeably have ſet their hands and ſeals the day and year firſt above-written: and the ſaid jurors further ſay upon their oath, that the aforeſaid manors, tenements and hereditaments of *Halliwell* and *Eaſt*

East Hartford in the said indenture last mentioned specified, lie and be in *Hartford*, *East Hartford*, *Halliwell*, and the parishes of *Woodborne* and *Garsdon* within mentioned, and are the aforesaid parcel of the tenements aforesaid with the appurtenances within specified, and that after the making of the indentures aforesaid, to wit, on the 29th day of *June* in the 29th year abovesaid, the espousals were celebrated between the aforesaid *Ralph Bates* the son and the said *Margaret Bewicke*, and that the said *Ralph Bates* the son by virtue of the grant aforesaid, and by force of the statute aforesaid, was seised of the said parcel of the tenements aforesaid with the appurtenances as the law requireth; and they the said *Ralph Bates* the son and *Margaret* after the espousals were celebrated between them, as before is set forth, had issue of their bodies lawfully begotten the aforesaid *Thomas Bates*, the now tenant, their first begotten son, and one *R. Bates* their second son, and they had no other issue of their bodies begotten; and afterwards the said *Margaret*, who was married to the said *Ralph Bates* the son as aforesaid, and the said *R. Bates*, and the said *Ralph Bates* the father and *Margaret* his wife died, and the said *Ralph Bates* the son survived the said *Margaret* his wife, and the said *Ralph Bates* the father and *Margaret* his wife; and the said *Ralph Bates* the son being seised of the aforesaid parcel of the tenements aforesaid with the appurtenances, as before is set forth, afterward married to his wife the aforesaid *Ann*, the now demandant: and moreover the said jurors say upon their oath aforesaid, that the said *Ralph Bates*, sometime her husband, on the day when he espoused the aforesaid *Ann* and afterwards was seised of the aforesaid parcel of the tenements aforesaid with the appurtenances, by virtue of the indenture aforesaid and by force of the said statute for transferring of uses into possession as the law requireth, according to the form and effect of the indenture aforesaid; and being so seised thereof, afterwards died seised of such his estate thereof: and as to the residue of the tenements within written with the appurtenances, they the said jurors upon their oath aforesaid say that the within named *Ralph Bates* sometime the husband, &c. neither upon the day when he married the aforesaid *Ann*, nor at any time afterwards, was seised of the said residue of the tenements aforesaid with the appurtenances, of such his estate so that the said *Ann* the now demandant could be endowed thereof, as the aforesaid *Thomas Bates* within in pleading thereof hath alledged: but whether upon the whole matter aforesaid by the jurors aforesaid above found, the said *Ralph Bates* sometime the husband, &c. on the day when he married the aforesaid *Ann* the now demandant, or at any time afterwards, was

was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor, with the appurtenances, in *Hartford*, *East Hartford*, *Halliwell*, and the parishes of *Woodhorne* and *Garsdon* aforesaid, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof or not, they the said jurors are wholly ignorant, and thereupon pray the advice of the court here; and if upon the whole matter aforesaid in form aforesaid found it shall seem to the court here that the said *Ralph* sometime the husband, &c. on the day when he married the said *Ann* the now demandant, and afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof, then the jurors aforesaid say upon their said oath, that the said *Ralph* sometime the husband of the said *Ann* the now demandant, on the day when he married the said *Ann*, and afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture, and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof; and that the said *Ralph* sometime the husband, &c. of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture, and 800 acres of moor, whereof, &c. of such his estate being seised, on the 27th day of *July* in the 7th year of the reign of the lord the now king died so seised thereof, and that the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. are worth 270*l.* by the year in all issues beyond reprises; and they assess the damages of her the said *Ann* the now demandant, by reason of the detaining her dower thereof beyond the value aforesaid, and besides her costs and charges by her laid out about her suit in this behalf, to two pence, and for those costs and charges to 40*s.* And if upon the whole matter aforesaid in form aforesaid found it shall seem to the court here that the said *Ralph*, sometime the husband, &c. neither on the day when he married the said *Ann* the now demandant, nor at any time afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof, then they the said jurors say upon their said oath, that the said *Ralph*, sometime the husband, &c. neither on the day when he married the said *Ann* the now demandant, nor at any

any time afterwards, was seised of the said 15 messuages, two gardens, 600 acres of land, 600 acres of meadow, 800 acres of pasture and 800 acres of moor with the appurtenances, whereof, &c. of such his estate so that the said *Ann* could be endowed thereof: and because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties aforesaid here until in eight days of Saint *Hilary* to hear their judgment thereof, for that the said justices here are not thereupon, yet, &c.

The King *against* The Mayor of Lincoln.

Reported in 1 Ld. Raym. 337. *by the Name of* The King *and* Morris.

Mandamus to the mayor of Lincoln to admit one Abraham Morris to his freedom.

WILLIAM the third, by the grace of God, of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To the mayor and sheriffs, citizens and commonalty of the city of *Lincoln* in our county of *Lincoln*, greeting: whereas from time whereof the memory of man is not to the contrary, there hath been had such a custom within the said city, that every person who should serve as an apprentice within the city aforesaid in any art or mystery with any freeman or his assigns, freemen of the city aforesaid, for the space of seven years, might claim the liberty and privilege to be admitted into the place and office of one of the freemen of the city aforesaid, &c. into the freedom of the city aforesaid, and according to the custom of that city to enjoy and use all the liberties, privileges, pre-eminences and commodities belonging and appertaining to a freeman of the city aforesaid. And also whereas one *Abraham Morris* hath lately served as an apprentice within the city aforesaid for the space of seven years, in the art or mystery of a mercer, with a freeman of the city aforesaid, and his assigns, freemen of the city aforesaid, according to the custom of the said city, and thereupon hath claimed the liberty and privilege to be admitted by you into the place and office of one of the freemen of the city aforesaid, and into the freedom of the said city to be admitted, and hath offered himself to perform the oath in that case required by a solemn affirmation or declaration according to the act made and set forth in the parliament holden in the 7th and 8th years of the reign of *William* the third now king of *England*, &c. he the said *Abraham* being then and there one of the dissenters commonly called quakers;

nevertheless you the said mayor, &c. well knowing the premisses, have not admitted the said *Abraham Morris* into the aforesaid place and office of one of the freemen, and into the freedom of the city aforesaid, nor have permitted the aforesaid *Abraham Morris* to make a solemn affirmation or declaration according to the said act, instead of the oath in that case used, according to the duty of your office, but so to do you do unjustly refuse, in contempt of us, and to the great damage of him the said *Abraham*, and to the manifest grievance and hurt of his estate, as we have received information by his complaint: we therefore willing that due and speedy justice in this behalf be done to the said *Abraham* as is right, command you and every of you, firmly enjoining that immediately after the receipt of this writ you admit the aforesaid *Abraham Morris* to the place and office of one of the freemen and to the freedom of the city aforesaid, together with all liberties, privileges, pre-eminences and commodities thereunto belonging, and permit the said *Abraham Morris* to make the solemn affirmation or declaration aforesaid, instead of the oath in that case used; or signify to us cause to the contrary, lest through your default complaint be again made unto us, &c. Witness, &c.

The Return of the Writ.

The execution of this writ appears in a certain schedule to this writ annexed.

George Bracebridge, mayor.

The Answer of the Mayor, Sheriffs, Citizens and Commonalty of the city of Lincoln *to the Writ to this Schedule annexed, according to the Command of the said Writ.*

We humbly certify to the lord the king that the city of *Lincoln* aforesaid is not in the county of *Lincoln*, but in the county of the city of *Lincoln*, and that there is had, and from time whereof the memory of man is not to the contrary, there hath been had such a custom within the city aforesaid, that every person who hath served as an apprentice within the city aforesaid in any art or mystery with any freeman, or his assigns freemen of the city aforesaid for the space of 7 years, hath afterwards offered himself in the common council of the mayor, sheriffs, citizens and com-

commonalty of the city aforesaid to perform the oath in that case used in these *English* words following: you shall bear faithful allegiance to our sovereign liege lord the king, (naming the king then upon the throne) and to his heirs, kings of *England*; and be meet and justifiable to the mayor of this city that now is, and his successors that hereafter shall be, all that may be for the common profit of this city you shall do, and all liberties and franchises thereof you shall maintain: to your power, all ordinances and customs made and to be made, you shall keep. You shall be levant and couchant to keep house or chamber within this city, and all manner of charges and offices laid to you for commonweal, worship or profit of this city you shall bear, and be contributary to your power. You shall have no part of merchandize with any merchant stranger to sell or colour by any means, but you shall pay toll for it. You shall colour none of infranchised mens goods, whereby the sheriffalty or the commonalty should lose their right. You shall nothing do nor labour that shall be to the prejudice, derogation or hindrance of the commonweal or profit of this city, but all points and articles, and what else belongs to be done by a freeman of this city, you shall keep and maintain to your power. So help you God. And not before, hath claimed the liberty and privilege to be admitted into the place and office of one of the freemen of the city aforesaid and into the freedom of the said city according to the custom of that city, and to enjoy and use all the liberties, privileges, pre-eminences and commodities belonging and appertaining to a freeman of the said city, and after the performing of the said oath, and not before, ought to be admitted by the common council of the mayor, sheriffs, citizens and commonalty of the city aforesaid, one of the freemen of the city aforesaid, and into the freedom of the city aforesaid, according to the custom of that city, and to enjoy and use all the liberties, privileges, pre-eminences and commodities belonging and appertaining to a freeman of the city aforesaid. And we further certify that the said *Abraham Morris* lately, to wit, on the 10th day of *February* in the eighth year of the reign of the lord the now king hath served as an apprentice within the city aforesaid for the space of seven years, in the art or mystery of a mercer with a freeman of the city aforesaid, according to the custom of the said city; and afterwards on the said 10th day of *February* in the same eighth year of the reign of the said lord the now king thereupon at the common council of the mayor, sheriffs, citizens and commonalty of the said city then holden within the city, claimed to be admitted then and there

there by the common council aforesaid to the liberty and privilege into the place and office of one of the freemen of the said city, and to the freedom of the said city, and then and there offered himself, instead of the usual form of the oath aforesaid, to make his solemn affirmation or declaration of the words of the oath aforesaid, according to the act made and set forth in the parliament holden in the seventh and eighth years of the reign of the said lord the now king of *England*, *&c.* intitled, An act that the solemn affirmation and declaration of the people called quakers shall be accepted instead of an oath in the usual form, he the said *Abraham* being then and yet one of the dissenters commonly called quakers; but the said *Abraham* then and there refused to make the oath in the usual form aforesaid, according to the custom of the said city. And we further certify to the said lord the king, that the office and place of a freeman of the city aforesaid, is an office and place of profit in the government in the aforesaid act mentioned; and that within the city aforesaid there is had, and from time whereof the memory of man is not to the contrary there hath been had such a custom, that every freeman of the city aforesaid should have a voice in the choosing two citizens to serve for the said city in the parliament of this kingdom, whensoever the king should ordain a parliament to be holden, and that every freeman of the said city hath common of pasture in the wastes lying within the city aforesaid for three horses, or for three cows or three heifers, at all times of the year. And we further certify to the said lord the king that the said *Abraham Morris* never offered himself in the common council of the mayor, sheriffs, citizens and commonalty of the city aforesaid to take, nor ever hath taken the said oath in the usual form aforesaid; and for these causes the said mayor, sheriffs, citizens and commonalty of the city aforesaid, have not admitted the said *Abraham Morris* into the said place and office of one of the freemen, and to the freedom aforesaid, nor have permitted the said *Abraham Morris* to make his solemn affirmation or declaration, according to the act aforesaid, instead of the oath in that case used to be made, but refused so to do the said 10th day of *February* in the said 8th year of the reign of the said lord the now king.

George Bracebridge, mayor.

Easter *Term in the ninth Year of King* William *the Third.* Roll 367.

Asthill *against* Clarke. Ld. Raym. 341.

Coke.

Replevin for taking sheep in the *High-street* at *Daventree.*

Northamptonshire, (to wit) WILLIAM *Clarke* the younger and *Robert Varnham* were summoned to answer *John Asthill,* gent. of a plea wherefore they took one sheep of him the said *John* and unjustly detained the same, against gages and pledges, &c. And whereupon the said *John* by *Edward Bromwich* his attorney complains, that the aforesaid *William* and *Robert* on the 14th day of *April* in the 8th year of the reign of the lord the now king at *Daventree,* in a certain place there called the *High-street,* took the sheep aforesaid, and unjustly detained the same, against gages and pledges, until, &c. whereupon he says that he is injured, and hath damage to the value of ten pounds; and thereupon he brings suit, &c. Pledges to prosecute *John Doe* and *Richard Roe.*

Cognizance as bailiffs of the earl of *Nottingham* for damage-feasant.

And the said *William* and *Robert* by *Thomas Pryor* their attorney come and defend the force and injury when, &c. And as bailiffs of *Daniel* earl of *Nottingham* well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. because they say that the said place in which the taking of the sheep aforesaid is supposed to be done was the soil and freehold of him the said *Daniel* earl of *Nottingham*; and because the sheep aforesaid at the said time when, &c. was in the said place in which, &c. feeding on the grass there then growing, and there doing damage to the said earl, they the said *William* and *Robert,* as bailiffs of him the said earl, and by his command, at the said time when, &c. well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.

Bar to the cognizance.

And the said *John Asthill* saith, that the said *William Clarke* the younger and *Robert Varnham,* for the reason before alledged, as bailiffs of the said *Daniel* earl of *Nottingham,* ought not to acknowledge the taking of the said sheep of him the said *John* in the place aforesaid in which, &c. to be just, because he saith, that long before the said earl of *Nottingham* had any thing in the said place in which, &c. the

That queen *Elizabeth* was seised in fee in right of her dutchy of *Lancaster*, and granted two fairs, &c.

the lady *Elizabeth*, late queen of *England*, was seised in her demesne as of fee in right of her duchy of *Lancaster* of and in the manor of *Daventree* in the said county of *Northampton* with the appurtenances, whereof the said place in which, &c. then was parcel; and being so seised thereof, she the said queen *Elizabeth* on the 26th day of *March* in the 18th year of her reign, by her letters patent sealed under her great seal of *England*, bearing date at *Westminster* the said 26th day of *March* in the 18th year of her reign abovesaid, of her special grace, for her heirs and successors, gave and granted to the bailiff, burgesses and commons of the borough of *Daventree* in the county of *Northampton*, and their successors, that they and their successors from thenceforth for ever should have and hold, and should be able to have and hold within the borough aforesaid, the precincts and liberties thereof, two fairs or marts there to be holden and kept yearly, that is to say, one fair on *Tuesday* next after the feast of the *Passover*, and continually to last for two days from thence next following, and one other fair upon the feast of Saint *Matthew* the apostle, and continually to last for two days from thence next following, together with a court of piepowder, and with all profits and commodities whatsoever forthcoming, happening, arising or contingent from such fairs or marts, and with all liberties and free customs to such markets, fairs or marts belonging or appertaining, as by the letters patent aforesaid, which the said *John* brings here into court, sealed with the great seal of *England*, more fully appears: by virtue of which said grant the said bailiff, burgesses and commons of the borough of *Daventree* aforesaid, and their successors, were seised and yet are seised as of fee and right in right of their corporation aforesaid of and in one fair, yearly holden in the said place in which, &c. called the *High-street*, being within the borough of *Daventree* aforesaid, on *Tuesday* next after the feast of the *Passover*, and continually for two days from thence next following, and of and in one other fair yearly there holden on the feast day of Saint *Matthew* the apostle, and continually for two days from thence next following, with all liberties and free customs to such fairs belonging: and the said *John* further saith, that at the fair holden at the said place in which, &c. within the said borough of *Daventree* aforesaid, on the said 14th day of *April* in the 8th year of the reign of the lord the now king abovesaid, being *Tuesday* next after the feast of the *Passover* last past, he the said *John* then and there in the said place in which, &c. called the *High-street* within the said borough of *Daventree* aforesaid, in the full and open fair there bought of a certain person unknown

And that plaintiff at one of the fairs bought the said sheep, and paid the toll for it, and had it in his custody until the defendants took it unjustly, &c.

unknown the ſheep aforeſaid, and then and there paid the cuſtomary toll payable for all things bought in that fair to the aforeſaid bailiff, burgeſſes and commons of the borough of *Daventree* aforeſaid, upon which the ſheep aforeſaid, being then and there lawfully in the cuſtody of him the ſaid *John*, they the ſaid *William* and *Robert* then took that ſheep of him the ſaid *John* in the ſaid place in which, &c. in the ſaid fair, and have unjuſtly detained it, in manner and form as the ſaid *John* above complains againſt them; and this the ſaid *John* is ready to verify: wherefore ſince the ſaid *William* and *Robert* have above acknowledged the taking of the ſheep aforeſaid, he the ſaid *John* prays judgment and his damages, by reaſon of the taking and unjuſtly detaining of the ſaid ſheep, to be adjudged to him, &c.

Demurrer.

And the aforeſaid *William Clarke* and *Robert Varnham* ſay, that the plea of the ſaid *John Aſhill* above pleaded in bar of the cognizance aforeſaid is not ſufficient in law to exclude them the ſaid *William* and *Robert* as bailiffs of the aforeſaid *Daniel* earl of *Nottingham* from acknowledging the taking of the ſaid ſheep in the place aforeſaid, in which, &c. to be juſt, and that they have no neceſſity, nor are bound by the law of the land to anſwer to that plea in manner and form aforeſaid pleaded; and this they are ready to verify: wherefore for want of a ſufficient plea of him the ſaid *John*, they the ſaid *William* and *Robert* pray judgment, and a return of the ſheep aforeſaid, together with their damages, &c. to be adjudged to them, &c.

Joinder in demurrer.

And the ſaid *John*, for that he hath above alledged ſufficient matter in law for him the ſaid *John* to have his ſaid action to be maintained againſt the ſaid *William* and *Robert*, which ſaid matter the ſaid *William* and *Robert* do not deny nor anſwer any thing to the ſame, but wholly refuſe to admit the ſaid averment, prays judgment and his damages, by reaſon of the taking and unjuſtly detaining of the ſaid ſheep, to be adjudged to him, &c. And becauſe the juſtices here will adviſe themſelves of and concerning the premiſſes before they give judgment thereupon, day is given to the parties aforeſaid here until the morrow of the Holy *Trinity*, to hear their judgment thereupon, for that the ſaid juſtices here are not thereof yet, &c.

Curia adviſare vult.

Hilary *Term in the ninth Year of King* William *the Third.* Roll 321.

Beale and his Wife *against* Simpson. 1 Ld. Raym. 408.

Debt by husband and wife, administratrix, for an escape out of execution.

Yorkshire, (to wit) WILLIAM *Simpson* late of *Mansfield* in the county of *Nottingham*, esq; chief bailiff of the liberty of the honour of *Pontefract* in the county of *York* aforesaid, was summoned to answer *Henry Beale*, esq; and *Hannah* his wife, administratrix of the goods and chattels which were of *John Stanhope*, esq; with the will to the administration annexed, during the minority of *Mary Stanhope* and *Hannah Stanhope* the daughters and residuary legatees of the aforesaid *John Stanhope*, of a plea that he render to them two hundred and three pounds and ten shillings, which he unjustly detains from them, &c. and whereupon the said *Henry* and *Hannah* by *Lawrence Breres* their attorney say, that whereas they the said *Henry* and *Hannah* his wife heretofore, that is to say, in the term of the Holy *Trinity* in the eighth year of the reign of the lord the now king, before *George Treby*, knt. and his companions then justices of him the said lord the king of the bench here, to wit, at *Westminster*, by the consideration of the same court, recovered by the name of *Henry Beale*, esq; and *Hannah* his wife, administratrix of the goods and chattels which were of *John Stanhope*, esq; with the will to the administration annexed, during the minority of *Mary Stanhope* and *Hannah Stanhope* the daughters and residuary legatees of the aforesaid *John*, against one *Richard Dickins*, gent. then and yet one of the attornies of the said court of the lord the king of the bench, otherwise called *Richard Dickins* of *Leeds* in the county of *York*, gent. upon a certain writing obligatory by the aforesaid *Richard* to the aforesaid *John Stanhope* in his life-time at *Leeds* aforesaid made, sealed and delivered, as well a certain debt of 200 *l.* as seventy shillings, which to the same *Henry* and *Hannah* his wife in the same court of the said lord the king of the bench aforesaid here were adjudged for their damages which they had sustained, by occasion of the detaining of that debt whereof he was convicted, as by the record and process thereof in the said court of the said lord the king of the bench aforesaid here, to wit, at *Westminster* aforesaid remaining, manifestly appears. And also whereas they the said *Henry* and *Hannah* his wife, for the

Declaration.

The judgment in *Com. B. Trin.* 8 *W.* 3.

Capias ad satisfac.

the obtaining execution of the judgment aforesaid afterwards in the same term of the Holy *Trinity* prosecuted out of the said court of the said lord the king of the bench aforesaid here a certain writ of him the said lord the king of *capias ad satisfaciendum*, of and upon the judgment aforesaid, against the aforesaid *Richard*, directed to the then sheriff of the county of *York* aforesaid; by which said writ the said lord the now king commanded the same then sheriff that he should take the aforesaid *Richard*, if, &c. and him safely, &c. so that he might have his body before the justices of the said lord the king here, to wit, at *Westminster* aforesaid, on *Saturday* next after fifteen days of Saint *Martin* then next following, to satisfy to them the said *Henry* and *Hannah* his wife of the debt and damages aforesaid in form aforesaid recovered; by virtue of which said writ *John Bradshaw*, esq; then being sheriff of the county of *York* aforesaid afterwards, to wit, on the first day of *August* in the 8th year abovesaid at *Leeds* aforesaid, made and directed his certain warrant in writing, sealed with the seal of his office of sheriff of the county of *York* aforesaid, to the chief bailiff of the liberty of the honour of *Pontefract* in the county of *York* aforesaid directed, which said chief bailiff then had and yet hath the full execution and return of all writs, precepts and warrants within the same liberty, and unto whom the execution of the writ aforesaid wholly belonged to be done, so that execution thereof out of the same liberty he might not cause to be done; by which said warrant the said *John Bradshaw* commanded the chief bailiff of the liberty of the honour of *Pontefract* aforesaid, that the same bailiff should take the said *Richard* if, &c. and him safely, &c. so that the aforesaid *John Bradshaw* might have the body of the aforesaid *Richard* before the said justices of the said lord the king here, to wit, at *Westminster* aforesaid, on the aforesaid *Saturday* next after the said fifteen days of Saint *Martin*, to satisfy to them the said *Henry* and *Hannah* his wife of the debt and damages aforesaid, by virtue of which said warrant the aforesaid *William Simpson* afterwards and before the return of the writ and warrant aforesaid, to wit, on the first day of *November* in the 8th year of the reign of the said lord the now king abovesaid, (the same *William* then being the chief bailiff of the aforesaid liberty of the honour of *Pontefract* aforesaid) at *Leeds* aforesaid, (which said town of *Leeds* is within the liberty aforesaid) took and arrested the aforesaid *Richard*, and then and there had and detained the aforesaid *Richard* in his custody in execution for the debt and damages aforesaid, by virtue of the warrant aforesaid; and the aforesaid *Richard* being so in prison under the custody of the aforesaid

Return thereof.

Warrant thereupon of the sheriff of *Yorkshire* to the bailiff of *Pontefract* liberty.

The execution executed by the defendant the bailiff of *Pontefract*.

William, in execution for the debt and damages aforesaid, as before is set forth, the aforesaid *William* afterwards, to wit, on the 3d day of *February* in the 8th year abovesaid (the aforesaid *William* being then and yet the chief bailiff of the liberty of the honour of *Pontefract* aforesaid) suffered the aforesaid *Richard* to escape out of his custody at *Leeds* aforesaid, and freely to go at large where he would, without the command of them the said *Henry* and *Hannah* his wife, or of either of them, and without their licence, and against the will of them the said *Henry* and *Hannah* his wife (they the said *Henry* and *Hannah* his wife, or either of them, not being then and there satisfied of, or paid the debt and damages aforesaid so recovered, as before is set forth), by which an action hath accrued to them the said *Henry* and *Hannah* his wife, to require and have of the aforesaid *William* the said two hundred and three pounds and ten shillings: nevertheless the aforesaid *William*, although often requested, the said 203*l.* and 10*s.* to the said *Henry* and *Hannah* his wife (to whom administration with the will annexed of all the goods and chattels which were of the aforesaid *John Stanhope* at the time of his death during the minority of the aforesaid *Mary* and *Hannah Stanhope*, the daughters and residuary legatees of the aforesaid *John Stanhope*, who are now in being in full life, and are yet within age, by *John*, by divine providence archbishop of *York*, primate of *England* and metropolitan, on the 29th day of *June* in the 5th year of the reign of the said lord the now king and lady *Mary* the second, late queen of *England*, &c. at *Leeds* aforesaid, after the death of the said *John Stanhope* was lawfully committed) nor to either of them hath rendered, but to render the same to them, or to either of them, hath hitherto wholly denied, and yet doth deny, and unjustly detains the same, whereupon they the said *Henry* and *Hannah* his wife say, that they are injured, and have sustained damage to the value of 40 *l.* and thereupon they bring suit, &c. And they bring here into court the letters of administration with the will annexed of the aforesaid archbishop, which testify the commission of the administration aforesaid in form aforesaid, &c.

The escape.

Commission of letters of administration.

And the aforesaid *William Simpson* by *Henry Wood* his attorney comes and defends the force and injury when, &c. and saith that the said *Henry* and *Hannah* ought not to have their said action thereof against him, because he saith, that before the aforesaid time when the aforesaid escape of the aforesaid *Richard Dickins*, or the permission of his going out of the custody of him the said *William* is supposed to be done, to wit, on the 23d day of *January* in the 8th year of

Bar, that before the escape an *ha. cor.* issued,

the reign of the lord the now king abovesaid, a certain writ of him the said lord the king of *habeas corpus*, issued out of the court of the same lord the king of the bench here, to wit, at *Westminster* in the county of *Middlesex*, directed to the bailiff of the liberty of the honour of *Pontefract* aforesaid, by which said writ the said lord the king commanded the said bailiff of the liberty aforesaid, that he should have the body of the aforesaid *Richard Dickins* detained in the prison of the said lord the king, under the custody of the aforesaid bailiff, together with the day and cause of his caption and detention, by whatsoever name the same *Richard* should be named in the same, before the justices of him the said lord the king here, to wit, at *Westminster* aforesaid, on *Saturday* next after the purification of the blessed *Mary* then next following, to do and receive that which the same court here should then and there consider concerning him in that behalf, and that the same bailiff should have there then that writ; which writ afterwards and before the aforesaid time when the escape aforesaid is supposed to have been suffered, to wit, on the 27th day of *January* in the 8th year abovesaid at *Leeds* aforesaid to the aforesaid *William* (being then and yet bailiff of the liberty aforesaid) was delivered to be executed in due form of law; by virtue of which said writ the said *William* afterwards and before the return thereof, to wit, on the said third day of *February* in the 8th year abovesaid at *Leeds* aforesaid, took the body of the aforesaid *Richard* out of the prison and gaol of the said lord the king of the liberty aforesaid, and carried the same under the custody of him the said *William* from the prison aforesaid by the common and nearest way unto *Westminster* aforesaid, and in court here at the return of the said writ had the same, according to the command of the same writ, and to the same court here in a certain schedule to the same writ annexed hath returned the day and cause of the caption and detention of him the said *Richard* in the form following, that is to say, that before the coming of that writ the said *Richard* was taken within the liberty aforesaid, and was detained in the prison of the said lord the king, under the custody of him the said *William*, by virtue of the said warrant in the declaration aforesaid mentioned for the debt and damages aforesaid specified in that declaration, and that that was the only cause of the caption and detention of the aforesaid *Richard* in the prison and custody aforesaid; which together with the body of him the said *Richard*, at the day and place in the said writ of *habeas corpus* mentioned, according to the command of that writ he had ready, and thereupon the said *Richard* then, to wit, at the said day of the

returnable *Cro. Par.*

Delivery of that writ to defendant.

The return thereof.

the return of the same writ by the same court here was committed to the prison of the said lord the king of the *Fleet* on the occasion aforesaid, there to remain until, &c. as by the record of that writ and the said return thereof, and the commitment aforesaid in the court here remaining, more fully appears; which said taking of the said *Richard* out of the said prison and gaol aforesaid, and carrying of the said *Richard* from that prison unto *Westminster* aforesaid, done for the cause aforesaid, is the same escape, and suffering of the said *Richard* to escape and go at large out of the custody of him the said *William*, whereof the said *Henry* and *Hannah* themselves now above complain; and this he is ready to verify: wherefore he prays judgment if the said *Henry* and *Hannah* ought to have their said action thereof against him, &c.

Commitment to the *Fleet*.

Which is the same escape, &c.

And the aforesaid *Henry* and *Hannah* his wife protesting, that the said writ of *habeas corpus* in the said plea of the said *William* above mentioned was not delivered to the said *William* before the said time the said escape in the said declaration of them the said *Henry* and *Hannah* above mentioned was suffered, as the said *William* in his said plea hath alledged: nevertheless for replication to the said plea of the said *William* they say, that by any thing by the said *William* above alledged they ought not to be barred from having their said action against the said *William*, because they say, that on the 28th day of *November* in the 8th year of the reign of the said lord the now king abovesaid, a certain writ of him the said lord the king of *habeas corpus*, issued out of the said court of the said lord the king of the bench aforesaid here, to wit, at *Westminster* aforesaid, to the bailiff of the liberty of the honour of *Pontefract* aforesaid directed: by which said writ the said lord the now king commanded the said bailiff of the liberty of the honour of *Pontefract* aforesaid, that he should have the body of the said *Richard Dickins*, by whatsoever name he should be named in the prison of the said lord the now king, under the custody of the said bailiff of the liberty aforesaid, together with the day of the caption and detention of the said *Richard*, before the justices of the said lord the king here, to wit, at *Westminster* aforesaid on *Saturday* next after eight days of Saint *Hilary* then next following, (being the 23d day of *January* in the 8th year of the reign of the said lord the now king abovesaid) that they the said justices of the said lord the king of the bench here aforesaid having seen the cause, might be able to do in that behalf that which was of right to be done, according to the law and custom of the kingdom of *England*; and that the same bailiff should then

Replication *protestando* as to the said *ha. cor.* and replies a different *ha. cor.*

issued out the 28th *Novem.*

Returnable *Octab. Hil.*

then have there that writ; which said writ afterwards and before the return thereof, to wit, on the ninth day of *December* in the 8th year abovesaid at *Leeds* aforesaid, was delivered to the aforesaid *William*, then being bailiff of the liberty aforesaid, to be executed in form of law, but the aforesaid *William* at or before the return of the said writ did nothing thereupon, but by colour and pretence of that writ after the return thereof, to wit, on the said 3d day of *February* in the 8th year abovesaid at *Leeds* aforesaid, without any other writ, precept or authority, and against the will of them the said *Henry* and *Hannah* his wife, took the body of the aforesaid *Richard* out of the said prison and gaol of the said lord the king of the liberty aforesaid, and the same to *Westminster* aforesaid, under the custody of the aforesaid *William* afterwards to wit, on the 6th day of *February* in the 8th year abovesaid, brought and there had; and the aforesaid *Richard* being there, afterwards to wit, the same 6th day of *February* in the 8th year abovesaid, by fraud and covin between him the said *William*, and other persons to them the said *Henry* and *Hannah* his wife unknown, the said writ of *habeas corpus* in the said plea of the said *William* above specified was sued forth out of the said court of the bench aforesaid here, and delivered to him the said *William*, and not before; by which said writ the said lord the king also commanded the said bailiff of the liberty aforesaid in manner and form as the said *William* by his said plea hath above alledged; by virtue of which said writ of *habeas corpus* last mentioned, the said *William*, the body of the aforesaid *Richard* afterwards, to wit, the same 6th day of *February*, being the said *Saturday* next after the purification of the blessed *Mary*, brought into the said court of the said lord the king of the bench here, and in the same court then and there had, and to the said court here in a certain schedule to the same writ of *habeas corpus* last mentioned annexed returned the day and cause of the caption and detention of the aforesaid *William* in the form as the aforesaid *William* by his plea aforesaid hath above pleaded; and thereupon the said *Richard* afterwards, to wit, the said 6th day of *February* in the 8th year abovesaid, being the day of the return of the said writ of *habeas corpus* last mentioned, was committed by the said court of the said lord the king of the bench aforesaid here to the said prison of the said lord the king of the *Fleet*, on the occasion aforesaid, there to remain until, &c. as the aforesaid *William* hath above alledged; without this, that the said *William*, by virtue of the said writ of *habeas corpus* in the said plea of him the said *William* mentioned, took the body of the aforesaid

which was delivered to defendant 9th of *Dec.*

That after the return of it on 3d of *Feb.* he took defendant in the judgment by colour, &c. and brought him to *Westminster* the 6th of *Feb.*

And the same day by fraud, &c. the *ha. cor.* in the plea was sued forth and delivered to defendant and not before.

That by virtue of the last *ha. cor.* defendant in the judgmen was brought to *Westminster* said 6th of *February*,

and was thereupon committed to the *Fleet*.

Traverse.

aforesaid *Richard* out of the said prison and gaol of the said lord the king of the liberty aforesaid, and carried the same from the prison aforesaid to *Westminster*, as the aforesaid *William* by his said plea hath also above alledged; and this they the said *Henry* and *Hannah* his wife are ready to verify; whereupon they pray judgment and their said debt, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c.

Special demurrer.

And the aforesaid *William* saith, that the said plea of them the said *Henry* and *Hannah* above pleaded in reply, and the matter in the same contained, are not sufficient in law for them the said *Henry* and *Hannah* to have their said action to be maintained against him the said *William*; and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is bound by the law of the land to answer; and this he is ready to verify: wherefore for want of a sufficient plea of them the said *Henry* and *Hannah* in this behalf the said *William* prays judgment, and that the said *Henry* and *Hannah* may be barred from having their said action against him the said *William*, &c. And for cause of this demurrer in law the said *William* sheweth to the court here, and saith, that the traverse aforesaid is repugnant, and traverseth matter not traversable, &c.

Cause.

Joinder in demurrer.

And the aforesaid *Henry* and *Hannah* protesting that the said traverse in their replication above contained is not repugnant, but good and sufficient in law; and that they the said *Henry* and *Hannah* have traversed matter traversable, say, that they have above alledged in reply sufficient matter in law for them the said *Henry* and *Hannah* to have their said action to be maintained against the aforesaid *William Simpson*, which they are ready to verify; which said matter the said *William* doth not deny, nor in any way answereth to the same, but hath wholly refused to admit that averment, wherefore as before they the said *Henry* and *Hannah* pray judgment and their debt aforesaid, together with their damages, by occasion of the detention of that debt, to be adjudged to them, &c.

Michaelmas, *the* 10*th of* William *the Third.* Plea Roll 255.

Mosley *against* Coldwell. 1 Ld. Raym. 430.

Yorkshire, (to wit) RICHARD *Mosley,* the son and heir of *Richard Mosley* deceased, by *William Radcliff* his attorney demands against *Thomas Coldwell* two messuages, twenty acres of land, twenty acres of meadow, and twenty acres of pasture with the appurtenances in *Shelley,* of which *John Mosley* the grandfather of the aforesaid *Richard* the son, was seised in his demesne as of fee; and by a certain indenture made between him the said *John* and *Joseph Lockwood* and *John Clay,* covenanted and granted with them the said *Joseph* and *John Clay,* that he the said *John* the grandfather and his heirs should stand and be seised of the tenements aforesaid with the appurtenances, to the use of *Richard Mosley* the son and heir of the said *John* the grandfather and the heirs males of his body lawfully begotten or to be begotten; and that after the death of the said *Richard* the son and heir of the said *John* the grandfather, they ought to descend to the aforesaid *Richard* the son and heir of the said *Richard,* by form of the covenant and grant aforesaid, and by force of the statute, *&c.* and whereupon he saith that the said *John Mosley,* the grandfather of the said *Richard* on the 18th day of *October* in the tenth year of the reign of *Charles* the first late king of *England, &c.* was seised of and in the tenements aforesaid with the appurtenances in his demesne as of fee; and being so seised thereof, he the said *John Mosley* afterwards, to wit, the same 18th day of *October* in the tenth year abovesaid, by a certain indenture made between him the said *John Mosley* of the one part, and the said *John Lockwood* and *John Clay* of the other part, at *Shelley* aforesaid, and here brought into court, for and in consideration of the intire love and affection which he the said *John* the grandfather bore towards the aforesaid *Richard* the son and heir apparent, and that the tenements aforesaid should continue and remain in the blood and name of the aforesaid *John* the grandfather as long as God should permit the same, covenanted and granted with them the said *Joseph Lockwood* and *John Clay,* their executors and administrators, that he the said *John* the grandfather and his heirs, and all other person and persons who then were or at any time afterwards should and might be seised of the tenements aforesaid with the appurtenances, shoould stand and be seised thereof to the use of *Richard*

Formedon in descender upon a covenant to stand seised.

Mosley his son and heir apparent, and the heirs males of his body lawfully begotten or to be begotten; by virtue whereof and by force of the statute made in the parliament of *Henry* the 8th late king of *England*, and holden at *Westminster* in the county of *Middlesex* the fourth day of *February* in the 27th year of his reign, of transferring uses into possession, the said *Richard Mosley* the son of the said *John* was seised of the tenements aforesaid with the appurtenances in his demesne as of fee and right, according to the form of the covenant and grant aforesaid, *&c.* in the time of peace in the time of the lord *Charles* the second late king of *England*, *&c.* within twenty years now last past, by taking the profits thereof to the value, *&c.* and from him the said *Richard* the son of the said *John Mosley* the right descends, by form, *&c.* to him the said *Richard*, who demands the right as son and heir of the said *Richard*, his father, and which after his death, *&c.* and thereupon he brings suit, *&c.*

Non tenure as to part,

And the aforesaid *Thomas* by *Henry Hemingway* his attorney comes, and as to one messuage, ten acres of land, fifteen acres of meadow and fifteen acres of pasture with the appurtenances, parcel of the tenements aforesaid with the appurtenances above demanded, saith, that he cannot render the same tenements, parcel, *&c.* to the aforesaid *Richard* the now demandant, because he saith that he is not tenant of the same one messuage, ten acres of land, fifteen acres of meadow and fifteen acres of pasture with the appurtenances, or of any parcel thereof, as of freehold, neither was he so on the day of obtaining of the original writ of the said *Richard*, nor at any time afterwards, but one *John Downes* is, and on the day of obtaining that writ was thereof tenant as of freehold; and this he is ready to verify: whereupon as to the same tenements, parcel, *&c.* with the appurtenances, he the said *Thomas* prays judgment of the writ, *&c.* And as to one messuage, ten acres of land, five acres of meadow and five acres of pasture with the appurtenances, residue of the tenements aforesaid above demanded, he the said *Thomas* defends his right when, *&c.* and saith that the said *Richard* the now demandant, after the death of the said *Richard* his father, into the same tenements the residue with the appurtenances entered, as into lands to him in form aforesaid descending, and was thereof seised; and this he is ready to verify; whereupon as to the same tenements with the appurtenances the residue, *&c.* he the said *Thomas* also prays judgment of the writ aforesaid, *&c.*

and shews who is the tenant of that part.

And as to the residue that demandant entered.

And

Replication to the non-tenure that the tenant was tenant and issue.

And the said *Richard Mosley*, as to the said plea of the said *Thomas* as to the said one messuage, ten acres of land, 15 acres of meadow and 15 acres of pasture, parcel of the tenements aforesaid with the appurtenances, above demanded above pleaded in abatement of the said writ, saith, that that writ for the reason above alledged ought not to be abated, because he saith, that on the day of obtaining the said original writ of him the said *Richard Mosley*, that is to say, on the 18th day of *February* in the ninth year of the reign of the lord the now king, the aforesaid *Thomas* was tenant of those tenements with the appurtenances as of freehold, as by the writ aforesaid is supposed; and he prays that this may be inquired of by the country, and the aforesaid *Thomas* likewise, &c. And as to the said plea of the said *Thomas* as to the said one messuage, ten acres of land, five acres of meadow and five acres of pasture with the appurtenances above pleaded, he the said *Richard* saith, that by any thing in that behalf above pleaded his said writ ought not to be abated, because he saith, that the said plea by him the said *Thomas* above pleaded in that behalf, and the matter in the same contained, are not sufficient in law to abate the said writ in that part to which the said *Richard* hath no necessity, nor is bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *Richard* prays judgment, and that his said writ in that part may be adjudged good, and that the aforesaid *Thomas* may answer over to the writ in that part, &c.

To the residue demandant demurs.

Joinder in demurrer.

Trinity, *the 9th of King* William *the Third.* Roll 302.

Kinsey *against* Hayward. 1 Ld. Raym. 432.

Assumpsit by an administrator against an executor.

London, (to wit) HENRY *Hayward* late of *Southwark* in the county of *Surry*, carpenter, executor of the last will and testament of *John Hayward* deceased, was attached to answer *Mary Kinsey* widow, administratrix of the goods and chattels which were of *Thomas Kinsey*, knt. her late husband, who died intestate, &c. of a plea of trespass upon the case, &c. And whereupon the said *Mary* by *Francis Jackson* her attorney complains, that whereas the aforesaid *John* in his life-time, to wit, on the fifth day of *August*

August in the year of our Lord 1682, at *London* in the parish of the blessed *Mary* of the arches in the ward of *Cheape*, was indebted to the said *Thomas* in his life-time in 50 *l.* of lawful money of *England*, for monies by him the said *Thomas* in his life-time before that time advanced and lent to the said *John*; and being thereof so indebted, he the said *John* in consideration thereof afterwards, to wit, the same fifth day of *August* in the year of our Lord 1682, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Thomas* in his life-time then and there faithfully promised that he the said *John* the said 50 *l.* to him the said *Thomas*, when he should be thereunto afterwards requested, would well and faithfully pay and content. And also whereas the aforesaid *John* in his life-time afterwards, to wit, the fourth day of *February* in the year of our Lord 1692, at *London* aforesaid in the parish and ward aforesaid, accounted together with the aforesaid *Thomas* in his life-time of and concerning divers other sums of money by the aforesaid *John* before that time owing and payable for divers sums of money by the said *John* of the said *Thomas* before that time borrowed, had and received, and being then unpaid; and upon that account he the said *John* was then and there found in arrear towards him the said *Thomas* in other 50 *l.* of the like lawful money of *England*; and being thereupon so found in arrear, the aforesaid *John* in consideration thereof afterwards, to wit, the same fourth day of *February* in the year of our Lord 1692 abovesaid, at *London* aforesaid in the parish and ward aforesaid, assumed upon himself, and to the said *Thomas* then and there faithfully promised that he the said *John* the said 50 *l.* last mentioned to him the said *Thomas*, when he should be thereunto afterwards requested, would well and faithfully pay and content: nevertheless the aforesaid *John* in his life-time, and the said *Henry* after the death of him the said *John*, the aforesaid several promises and undertakings of the aforesaid *John* in his life-time in form aforesaid made, not at all regarding, but contriving and fraudulently intending him the said *Thomas* in his life-time, and the aforesaid *Mary* after the death of him the said *Thomas* in this behalf craftily and subtilly to deceive and defraud, the aforesaid several sums of money, or any part thereof, to him the said *Thomas* in his life-time, or to the aforesaid *Mary* after the death of him the said *Thomas* (to which said *Mary* after the death of him the said *Thomas*, administration of all the goods and chattels which were of the said *Thomas* at the time of his death, by *Thomas* by divine providence archbishop of *Canterbury* primate of all *England* and metropolitan, to whom

Money lent.

Upon an account stated.

Letters of administration granted.

whom in that behalf it belonged, to commit administration, on the 13th day of *February* in the year of our Lord 1696, at *London* aforesaid in the parish and ward aforesaid, was committed in due form of law) have not paid or contented, nor hath either of them paid, or in any manner for the same contented, (although to do this the aforesaid *John* in his life-time, and the said *Henry* afrer the death of him the said *John* by the said *Thomas* in his life-time, and after the death of the said *Thomas* the said *Henry* by her the said *Mary* afterwards, to wit, on the 29th day of *April* in the year of our Lord 1697, and often afterwards, at *London* aforesaid in the parish and ward aforesaid, have been requested) but the said *John* in his life-time, and the said *Henry* after the death of him the said *John*, the aforesaid several sums of money, or any part thereof, to him the said *Thomas* in his life-time have wholly refused to pay, and the said *Henry* to pay the same to the said *Mary* after the death of the said *Thomas*, or in any manner to content her for the same yet wholly refuses, to the damage of her the said *Mary* of 100 *l.* and in delay of the execution of the administration of the goods and chattels aforesaid; and thereupon she brings suit, &c. And she brings here into court the letters of administration of the said archbishop, which testify the commission of the administration aforesaid to the said *Mary* in form aforesaid, &c.

Bar, *non assumpsit infra sex annos.*

And the aforesaid *Henry* by *Culverwell Needler* his attorney comes and defends the force and injury when, &c. and saith that the said *Mary* ought not to have her said action thereof against him, because he saith, that the said *John* in his life-time, at any time within six years next before the day of obtaining the original writ of her the said *Mary*, did not assume upon himself in manner and form as the aforesaid *Mary* above complains against him; and this he is ready to verify: whereupon he prays judgment if the said *Mary* ought to have her said action thereof against him, &c.

Replication, that the intestate within 6 years sued forth an original,

And the aforesaid *Mary* saith that she, by any thing by the said *Henry* above pleaded, ought not to be barred from having her said action against him, because she saith that the aforesaid *Thomas* in his life-time, by the name of *Thomas Kinsey*, knt. and within six years after the cause of action aforesaid above specified accrued, to wit, on the 28th day of *May* in the 4th year of the reign of the lord *James* the second late king of *England*, &c. for the recovery of his damages by occasion of the non-performance of the several promises and undertakings in the declaration aforesaid in form aforesaid above mentioned, sued forth out of the court of chancery

chancery of the said late king (the same court being then at *Westminster* in the county of *Middlesex*) a certain original writ of the said late king of a certain plea of trespass against the aforesaid *John*, by the name of *John Hayward* late of *Southwark* in the county of *Surry* carpenter, directed to the then sheriff of the county of *Dorset*, by which said writ the said late king commanded the said then late sheriff of the county of *Dorset*, that if the said *Thomas* should make him secure of prosecuting his claim, then he should put by gages and safe pledges the aforesaid *John*, that he should be before the then justices of the said late king on the morrow of the ascension of our Lord then next following, to shew wherefore with force and arms the close of him the said *Thomas* at *Beamister* he had broken, and other wrongs to him had done, to the great damage of him the said *Thomas*, and against the peace of the said late king, and that he should have there the names of the pledges, and that writ; which said writ he the said *Thomas* sued forth against the said *John*, with an intention that upon the appearance of him the said *John* to the said writ of him the said *Thomas*, he the said *Thomas*, according to the custom of the court of the bench here from time whereof the memory of man is not to the contrary used and approved in the same, would declare thereupon against the aforesaid *John* for the cause aforesaid mentioned in the declaration of her the said *Mary*, but he the said *John* did not appear, but afterwards, to wit, the first day of *April* in the year of our Lord 1693, at *London* aforesaid in the parish and ward aforesaid died, upon which the aforesaid *Thomas* recently, to wit, on the twelfth day of *April* in the fifth year of the reign of the lord the now king and of lady *Mary* the late queen, for the recovery of his damages by occasion of the non-performance of the several promises and undertakings in the declaration in form aforesaid above mentioned, sued forth out of the court of chancery of the said lord the now king and lady the late queen (the said court being then at *Westminster* in the county of *Middlesex*) a certain other original writ of the said lord the now king and lady the late queen of a plea of trespass against the aforesaid *Henry*, by the name of *Henry Hayward* late of *Southwark* in the county of *Surry*, directed to the then sheriff of the county of *Dorset*; by which said writ the said lord the now king and lady *Mary* the late queen then commanded the sheriff of the county of *Dorset*, that if the said *Thomas* should make him secure of prosecuting his claim, then he should put by gages and safe pledges the aforesaid *Henry*, that he should be before the then justices of the said lord

In trespass *quare clausum fregit* against testator,

with an intention to declare for the cause in the present declaration.

That the testator did not appear, but died.

Another writ in trespass,

lord the now king and lady *Mary* the late queen from *Easter* day in fifteen days then next following, to shew wherefore with force and arms the close of him the said *Thomas* at *Beamister* he had broken, and other wrongs to him had done, to the great damage of him the said *Thomas*, and against the peace of the said lord the now king and of the late queen, and that he should have there the names of the pledges, and that writ; which said writ he the said *Thomas* sued forth against the said *Henry*, with an intention that upon the appearance of him the said *Henry*, to the said writ of him the said *Thomas*, he the said *Thomas*, according to the custom of the court of the bench here, from time whereof the memory of man is not to the contrary, used and approved in the same, would declare thereupon against the said *Henry* as executor of the will of the aforesaid *John* for the cause aforesaid in the declaration of her the said *Mary* mentioned; but he the said *Henry* did not appear, and the aforesaid *Thomas* afterwards, to wit, on the fifth day of *February* in the 8th year of the reign of the lord the now king, at *London* aforesaid in the parish and ward aforesaid died, and thereupon the administration aforesaid was committed to her the said *Mary* the day, year and place, and in the manner and form in the declaration of her the said *Mary* above specified; upon which the said *Mary* recently, to wit, on the 29th day of *April* in the ninth year of the reign of the lord the now king, sued forth out of the court of chancery of the said lord the now king the same court being then at *Westminster* aforesaid in the county of *Middlesex* aforesaid, the original writ of him the said lord the now king in the said plea of trespass upon the case, returnable in the court of the lord the king of the bench here on the morrow of the ascension of our Lord, in the ninth year of the reign of the lord the now king, to which said original writ of her the said *Mary* the aforesaid *Henry* in the term of *Easter* last past appeared by *Culverwell Needler* her attorney in the said court of the lord the king of the bench here, and thereupon she the said *Mary* in the said term of *Easter* last past hath declared against the aforesaid *Henry* of the plea aforesaid in manner and form abovesaid; and the aforesaid *Mary* saith that the said *Thomas* sued forth the said original writ of him the said *Thomas* against the said *John* with an intention that upon the appearance of him the said *John* to the said writ of him the said *Thomas* he the said *Thomas* would declare thereupon against the said *John* for the cause aforesaid in the declaration of her the said *Mary* mentioned, according to the custom of the said court of the bench here, and that the cause of action aforesaid first accrued within six

to the same intent as before.

That the defendant did not appear, and the intestate of plaintiff died.

An original for the plaintiff in case,

to which the defendant hath appeared,

and thereupon the plaintiff has declared as above.

Averments.

ſix years next before the day of obtaining the ſaid original writ of him the ſaid *Thomas*; and that the ſaid *Thomas* after the death of him the ſaid *John* ſued forth the ſaid original writ of him the ſaid *Thomas* againſt the ſaid *Henry* with an intention that upon the appearance of him the ſaid *Henry* to the ſaid writ of him the ſaid *Thomas*, he the ſaid *Thomas* would declare thereupon againſt the aforeſaid *Henry* for the cauſe aforeſaid in the declaration of her the ſaid *Mary* mentioned, according to the cuſtom of the ſaid court of the bench here; and that the aforeſaid *Thomas* in the ſaid ſeveral original writs of him the ſaid *Thomas* named, and the aforeſaid *Thomas* in the writ and declaration of her the ſaid *Mary* above named, are one and the ſame perſon, and not others nor divers; and that the aforeſaid *John* in the ſaid firſt original writ of him the ſaid *Thomas* above named, and the ſaid *John* in the writ and declaration of her the ſaid *Mary* above named, are one and the ſame perſon, and not others or divers; and that the ſaid *Henry* the now defendant, and the ſaid *Henry* in the ſaid original writ of him the ſaid *Thomas* above named, are one and the ſame perſon, and not others nor divers; and this ſhe is ready to verify: whereupon ſhe prays judgment and her damages, by occaſion of the premiſſes, to be adjudged to her, &c.

Demurrer, and joinder in demurrer.

Trinity *Term in the 6th Year of* William *and* Mary. Roll 507.

Tonkin *againſt* Crocker. Ld. Raym. 880.

Replevin for taking a braſs pan.

Cornwall, (to wit) JAMES *Crocker*, gent. and *Leonard Billing* were ſummoned to anſwer *William Tonkin* of a plea wherefore they took one braſs pan of him the ſaid *William*, and unjuſtly detained the ſame, againſt gages and pledges, &c. And whereupon the ſaid *William* by *Philip Hawkins* his attorney complains that the aforeſaid *James* and *Leonard* on the fourth day of *November* in the fifth year of the reign of our lord *William* and our lady *Mary* now king and queen of *England*, &c. at the pariſh of Saint *Agnes*, in a certain place there called *the Kitchen*, took one braſs pan of him the ſaid *William*, and unjuſtly detained the ſame, againſt gages and pledges, until, &c. whereupon he ſaith that he is injured, and hath damage to the value of one hundred ſhillings, and thereupon he brings his ſuit, &c.

And

And the aforesaid *James* and *Leonard* by *John Foot* their attorney, come and defend the force and injury when, &c. and as bailiffs of *William Mohun*, esq; well acknowledge the taking of the said brass pan in the place in which, &c. and justly, &c. because they say that before the said time when the taking of the said brass pan is supposed to be done, one *Hugh Tonkin*, esq; was seised of a certain messuage and fifty acres of land called *Trewartha* with the appurtenances, in the parish of Saint *Agnes* aforesaid in the county aforesaid, whereof the aforesaid place called *The Kitchen* is, and at the said time when, &c. was parcel, in his demesne as of fee, and held the tenements aforesaid of the aforesaid *William Mohun* as of his manor of *Mithian* with the appurtenances in the same county by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, of which said services the aforesaid *William Mohun* was seised by the hands of the said *Hugh Tonkin*, as by the hands of his very tenant, that is to say, by fealty and suit of court aforesaid, as of fee and right and of the rent aforesaid in his demesne as of fee; and because four shillings for the rent aforesaid for one year ended at the feast of Saint *Michael* the archangel in the fifth year of the reign of the said now lord the king and lady the queen to the aforesaid *William Mohun* at the said time when, &c. were in arrear not paid, and suit of court at the court of the said *William Mohun* of his manor aforesaid at the parish of Saint *Agnes* within the said manor, on the 24th day of *October* in the fifth year of the reign of the said lord the king and said lady the queen abovesaid, holden for the said manor, was not done, they the said *James* and *Leonard*, as bailiffs of the said *William Mohun*, well acknowledge the taking of the brass pan aforesaid in the said place in which, &c. for the rent aforesaid so being in arrear, and for the suit of court so not done, as in parcel of the tenements aforesaid with the appurtenances, holden of the aforesaid *William Mohun* in manner aforesaid, and justly, &c. as within his fee and demesne, &c.

Cognisance as bailiffs of a manor.

And the aforesaid *William Tonkin* saith that the said *James* and *Leonard*, as bailiffs of the aforesaid *William Mohun*, ought not to acknowledge the taking of the said brass pan in the said place in which, &c. to be just, because protesting that the said *William Mohun* was not seised of the services aforesaid as he above supposes, he the said *William Tonkin* for plea saith that the aforesaid *Hugh Tonkin* held the tenements aforesaid of the aforesaid *William Mohun*, as of

Plea in bar to the cognisance.

of his manor of *Mithian* aforesaid, by the rent of four shillings for every year, to be paid at the feast of Saint *Michael* the archangel only; without this, that the aforesaid *Hugh Tonkin* held the tenements aforesaid of the aforesaid *William Mohun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings, to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as the aforesaid *James* and *Leonard* have above alledged; and this he is ready to verify: wherefore since the said *James* and *Leonard* have above acknowledged the taking of the said brass pan in the said place in which, &c. he the said *William Tonkin* prays judgment and his damages, by occasion of the taking and unjustly detaining the said brass pan, to be adjudged to him, &c.

Traverse.

And the aforesaid *James* and *Leonard* as before say, that the said *Hugh Tonkin* held the tenements aforesaid of the aforesaid *William Mohun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings, to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as they the said *James* and *Leonard* have above in pleading alledged; and of this they put themselves upon the country, and the aforesaid *William* likewise: therefore the sheriff is commanded that he cause to come here from the day of the Holy *Trinity* in three weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. at which day the jury between the parties aforesaid of the plea aforesaid was respited between them here until this day, to wit, from the day of Saint *Michael* in three weeks then next following, unless the justices of the lord the king, assigned to take the assizes in the county aforesaid, by form of the statute, &c. on *Wednesday* the first day of *August* next, past, at *Lanceston* in the county aforesaid should before come: and now here at this day come as well the said *William* as the said *James* and *Leonard* by their attornies aforesaid, and the said justices assigned to take the assizes, before whom, &c. have sent here their record in these words: Afterwards on the day and at the place within contained, before *John Powell*, knt. one of the justices of the lord the king and lady the queen of the bench, and *Thomas Rokeby*, knt, one other of the justices of the said lord the king and lady the queen of the bench, justices of the said lord the king and lady the queen assigned to take the assizes in the county of *Cornwall*, by form of the statute, &c. came the within named *William*

Replication and issue on the traverse.

Nisi prius.

Postea.

Tonkin by his attorney within contained, and the within written *James Crocker*, gent. and *Leonard Billing*, although solemnly called did not come, but made default; therefore the jury, whereof mention is within made, is taken against them by default: and the jurors of that jury being called, some of them, that is to say, *Edward Vowell*, *Ferdinando Spiller* and *Francis Kelley* came and are sworn upon that jury: and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers, chosen by the sheriff of the county aforesaid for this purpose, at the request of the said *William Tonkin*, and by the command of the justices aforesaid are newly appointed, whose names are affiled in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, that is to say, *Godfrey White*, *Giles Richards*, *Edward Mitchell*, *Reginald Cooke*, *John Cooke*, *Nicholas Leigh*, *John Goodman*, *George Baron* and *William Payte* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the other jurors aforesaid before impanelled and sworn to this purpose, say upon their oath, that long before the within written time when the taking of the within written brass pan is within supposed to be done, the manor of *Mithian* in the county within written within mentioned was an antient manor, of which said manor the within named *William Mohun*, esq; is, and at the within written time of the taking of the said brass pan was seised in his demesne as of fee: and the jurors aforesaid further say upon their oath aforesaid, that within the manor aforesaid, from time whereof the memory of man is not to the contrary, there hath been an antient court holden there before the steward of the manor aforesaid for the time being twice in the year, and there hath been several freehold tenants and several suitors who have done suit at the court aforesaid of the same manor; and that the within named *Hugh Tonkin*, esq; and all his ancestors were freehold tenants of the same manor, and have holden the messuage and tenements within mentioned in the avowry within written of the aforesaid *William Mohun* and his predecessors lords of the same manor, as of his manor of *Mithian* aforesaid with the appurtenances, by fealty, and the rent of four shillings, to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as within mentioned in the avowry within written: and the jurors aforesaid further say upon their oath aforesaid, that in the within manor of *Mithian* aforesaid there is, and for twenty years

Tales de circumstantibus.

Special verdict.

now last past there hath been one only freehold tenant or free suitor, to wit, the aforesaid *Hugh Tonkin*, but at the within written time when, &c. and also from time whereof the memory of man is not to the contrary there was, have been and now are several customary and conventionary tenants and suitors of the same manor: and the jurors aforesaid further say upon their oath aforesaid, that for rent and service in arrear the aforesaid *James Crocker* and *Leonard Billing*, as bailiffs of the said *William Mohun*, esq; lord of the manor of *Mithian* aforesaid within written, at the time when, &c. took and detained the brass pan within mentioned in the declaration within written: but whether upon the whole matter aforesaid found by the jurors aforesaid in form aforesaid the said *Hugh Tonkin* held the tenements within mentioned in the cognisance within written of the aforesaid *William Mohun*, as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor or not, the jurors aforesaid are wholly ignorant, and thereupon they pray the advice and consideration of the justices of the court of the said lord the now king here of the bench: and if upon the whole matter aforesaid found by the jurors aforesaid in form aforesaid, it shall seem to the justices of the court of the said lord the now king of the bench here, that the said *Hugh Tonkin* did not hold the tenements aforesaid of the said *William Mohun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid to be holden twice in the year at that manor, then they the said jurors say upon their oath aforesaid, that the said *Hugh Tonkin* did not hold the tenements aforesaid of the said *William Mohun* as of his manor aforesaid with the appurtenances, by fealty, and the rent of four shillings to be paid every year at the feast of Saint *Michael* the archangel, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as the said *James Crocker* and *Leonard Billing* within in pleading have alledged; and then they assess the damages of him the said *William Tonkin* by the occasion within written, besides his costs and charges by him laid out about his suit in this behalf, to two-pence, and for those costs and charges to 40 shillings; but if, &c. (so conclude in the usual form).

Michaelmas

Michaelmas *Term in the 5th Year of* William *and* Mary, *in* C. B. Roll 445.

Gerrard *against* Gerrard. 1 Ld. Raym. 72.

Staffordshire, (to wit) ELIZABETH *Gerrard* widow, who was the wife of *Digby* lord *Gerrard* baron of *Gerrard's Bromley*, by *Isaac Hawkins* her attorney, demands against *Charles* lord *Gerrard* baron of *Gerrard's Bromley*, the third part of one capital messuage called *Bromley Hall* with the appurtenances in *Ridge*, *Padmore*, *Ashley*, the parishes of *Eccleshal* and *Audley*, and of the hundred of *Pynehill* with the appurtenances, and of one hundred and one shillings rent in the same hundred, as the dower of her the said *Elizabeth*, of the endowment of the said *Digby*, heretofore her husband, &c. and it is to be known that the said *Elizabeth* in the court of the lord the king and lady the queen here made her demand, in the writ, of the third part of three other messuages, one dovehouse, four barns, four gardens, four orchards, and four hundred and six acres of land with the appurtenances; and the said *Elizabeth* now doth abridge her demand to the said third part of the said capital messuage, hundred and rent, with the appurtenances, &c.

Dower.

Abridgment of the demand.

And the said *Charles* lord *Gerrard* by *George Wheeler* his attorney comes, and as to the said capital messuage called *Bromley Hall* with the appurtenances, parcel of the tenements aforesaid with the appurtenances, in the demand aforesaid above specified, saith that the said *Elizabeth Gerrard* ought not to have her dower of the capital messuage aforesaid with the appurtenances of the endowment of the said *Digby* lord *Gerrard* heretofore her husband, because he saith that the said capital messuage in the demand aforesaid mentioned is named and called, and on the day of obtaining the said original writ of her the said *Elizabeth*, and also from time whereof the memory of man is not to the contrary, was named and called as well by the name of *Gerrard's Bromley*, as by the name of *Bromley Hall*, and that long before the day of obtaining the said original writ of the said *Elizabeth*, that is to say, on the 20th day of *July* in the first year of the reign of the lord *James* the first late king of *England*, one *Thomas Gerrard*, knt. was seised of the said capital messuage with the appurtenances, (amongst other things) in his demesne as of fee; and being so seised thereof, the said late king *James* the first, by certain letters patent under his great seal of *England*, bearing date at *Westminster* in the county of *Mid-*

Tenant pleads *detem non.*

Thomas Gerrard created a baron by *Jac.* I.

dlesex the first day of *July* in the first year abovesaid, (the exemplification whereof sealed, under the great seal of *England*, bearing date at *Westminster* the first day of *April* in the first year of the reign of the lord and lady the now king and queen, he the said *Charles* lord *Gerrard* brings here into court) advanced, preferred and created the said *Thomas Gerrard* to the state, degree, dignity and honour of baron *Gerrard* of *Gerrard's Bromley* aforesaid in the said county of *Stafford*, and preferred, constituted and created him the said *Thomas Gerrard* baron *Gerrard* of *Gerrard's Bromley* aforesaid, and by the said letters patent assigned and gave to him the said *Thomas* the name, stile, dignity and title of baron *Gerrard* of *Gerrard's Bromley*; to have and to hold to the said *Thomas Gerrard* and his heirs male of his body issuing for ever. And the said late king by his same letters patent further granted to him the said *Thomas Gerrard*, that he and his heirs male should have, hold and possess, and every one of them should have, hold and possess a seat and place, and voice in parliament, and in the public assemblies and councils of the said late king his heirs and successors, within his kingdom of *England*, amongst the other barons, as barons of parliament, and of the public assemblies and councils, as by the same letters patent, among other things, more fully appears: by virtue of which said letters patent the said *Thomas Gerrard* was seised as of fee-tail of the state, degree, dignity and honour of baron *Gerrard* of *Gerrard's Bromley* aforesaid, and was a baron of this kingdom of *England*, to wit, to himself and his heirs male of his body issuing, and was commorant and resiant with his family, servants and attendants in the said capital messuage of *Gerrard's Bromley*, called *Bromley Hall*; and the said capital messuage with the appurtenances became the head of the barony of him the said *Thomas* lord *Gerrard*, baron *Gerrard* of *Gerrard's Bromley* and was and hath continued to be, and yet continueth and is the head of the barony. And the said *Charles* lord *Gerrard* farther saith, that the said *Thomas* lord *Gerrard*, baron *Gerrard* of *Gerrard's Bromley* aforesaid, being so seised of the said barony, and the said capital messuage with the appurtenances the head of his barony aforesaid, he the said *Thomas* lord *Gerrard*, baron *Gerrard* of *Gerrard's Bromley*, afterwards at *Gerrard's Bromley* aforesaid died seised of such his estate; after whose death the said barony and capital messuage, the head of the said barony with the appurtenances descended to *Gilbert* lord *Gerrard*, as son and heir of the said *Thomas* lord *Gerrard*, whereby the said *Gilbert* lord *Gerrard* entered into the said capital messuage with the appurtenances, and was seised thereof in his demesne as of fee, and

That he was commorant at *Bromley Hall*.

which was *caput baroniæ*.

Descent to *Gilbert* lord *Gerrard*.

of the barony and honour aforeſaid as of fee-tail and right, and was commorant and reſiant in the ſaid capital meſſuage; and being ſo ſeiſed thereof, he the ſaid *Gilbert* lord *Gerrard* died ſeiſed of ſuch his eſtate thereof, after whoſe death the ſaid barony and capital meſſuage, the head of the ſaid barony with the appurtenances, deſcended to *Dutton* lord *Gerrard*, as ſon and heir of the ſaid *Gilbert* lord *Gerrard*, whereby the ſaid *Dutton* lord *Gerrard* entered into the ſaid capital meſſuage with the appurtenances, and was ſeiſed thereof in his demeſne as of fee, and of the barony and honour aforeſaid as of fee-tail and right, and was commorant and reſiant in the ſaid capital meſſuage; and being ſo ſeiſed thereof, he the ſaid *Dutton* lord *Gerrard* died ſeiſed of ſuch his eſtate thereof, after whoſe death the ſaid barony and capital meſſuage the head of the ſaid barony with the appurtenances deſcended to *Charles* lord *Gerrard* as ſon and heir of *Dutton* lord *Gerrard*, whereby the ſaid *Charles* lord *Gerrard* entered into the ſaid capital meſſuage with the appurtenances, and was ſeiſed thereof in his demeſne as of fee, and of the barony and honour aforeſaid as of fee-tail and right, and was commorant and reſiant in the ſaid capital meſſuage; and being ſo ſeiſed thereof, he the ſaid *Charles* lord *Gerrard* afterwards, to wit, on the 25th day of *November* in the twelfth year of the reign of the lord *Charles* the ſecond late king of *England*, &c. at *Gerrard's Bromley* aforeſaid, by his certain indenture made between him the ſaid *Charles* lord *Gerrard* of the one part, and certain perſons, *Charles Fane*, eſq; commonly called lord *Le Diſpencer*, *Edward Rockingham*, *Kildare* lord *Digby* of *Geſhail* in *Ireland*, and *Anthony Cope* bart. by the name of *Charles*, commonly called lord *Le Diſpencer* eldeſt ſon and heir apparent of the moſt noble *Mildmay* earl of *Weſtmorland*, *Edward* lord *Rockingham* of *Caſtro de Rockingham* in the county of *Northampton*, *Kildare* lord *Digby* of *Geſhail* in the kingdom of *Ireland*, and *Anthony Cope* of *Hanwell* in the county of *Oxford* bart. of the other part; and in conſideration of a certain ſum of money to him the ſaid *Charles* lord *Gerrard*, by the ſaid *Charles* lord *Le Diſpencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, in hand paid, bargained and ſold to the ſaid *Charles* lord *Le Diſpencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, the ſaid capital meſſuage with the appurtenances (among other things) to have and to hold to the ſaid *Charles* lord *Le Diſpencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, their executors, adminiſtrators and aſſigns, from the day next before the date of the ſaid indenture, for and during and unto the full end and term of ſix months from thence next following and fully to be compleat and ended: by

Then to *Dutton* lord *Gerrard*.

Then to *Charles* lord *Gerrard*.

The marriage ſettlement of *Charles* lord *Gerrard*.

by virtue of which said bargain and sale, and also by force of a certain act made and provided in the parliament of lord *Henry* the 8th late king of *England*, holden at *Westminster* in the county of *Middlesex* on the fourth day of *February* in the 27th year of his reign, for transferring of uses into possession, they the said *Charles* lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope* were possessed of the said capital messuage with the appurtenances; and being so possessed thereof, and the said *Charles* lord *Gerrard* being seised of the reversion thereof in his demesne as of fee, he the said *Charles* lord *Gerrard* afterwards, to wit, on the 29th day of *November* in the 12th year abovesaid, at *Gerrard's Bromley* aforesaid, by a certain indenture *quadripartite*, made between him the said *Charles* lord *Gerrard*, by the name of the noble *Charles* lord *Gerrard* of *Gerrard's Bromley* in the county of *Stafford* of the first part, one *George Digby* esq; and *Jane Digby* spinster, by the names of *George Digby* of *Sandon* in the county of *Stafford* esq; and *Jane Digby* sole daughter and only child of the said *George Digby* of the second part, the aforesaid *Charles Fane* called lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* of *Geshall* in *Ireland*, and *Anthony Cope*, of the third part, and *Edward Littleton* bart. *Walter Chetwind* the younger esq; *Thomas Kinnersley* esq; and *William Chetwind* esq; by the names of *Edward Littleton* of *Pelleton Hall* in the county of *Stafford* bart. *Walter Chetwind* the younger of *Ingestrey* in the said county of *Stafford* esq; and *William Chetwind* of *Ridgley* in the said county of *Stafford* esq; of the fourth part, granted to the said *Charles* lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, their heirs and assigns, the reversion of the said capital messuage with the appurtenances; to have and to hold to the said *Charles* lord *Le Dispencer*, *Edward* lord *Rockingham*, *Kildare* lord *Digby* and *Anthony Cope*, their heirs and assigns, to the use and behoof of the said *Charles* lord *Gerrard* and his heirs until the time of the solemnization of the then intended marriage between the said *Charles* lord *Gerrard* and the said *Jane Digby*; and from and after the solemnization of the then intended marriage, then to the use and behoof of the said *Charles* lord *Gerrard* for and during the term of his natural life without impeachment of waste; and from and after the determination of the said estate of the said *Charles* lord *Gerrard*, to the use and behoof of the said *Edward Littleton*, *Walter Chetwind*, *Thomas Kinnersley* and *William Chetwind* and their heirs during the natural life of the said *Charles* lord *Gerrard*; and after his decease, then to the use and behoof of the first son of the said *Charles* lord *Gerrard* on the body

The uses of the settlement to 1, 2, 3. &c. sons in tail male.

body of the said *Jane Digby* lawfully to be begotten, and to the heirs male of the body of such first son lawfully issuing; and for want of such issue, then to the use and behoof of the second son of the said *Charles* lord *Gerrard* on the body of the said *Jane Digby* lawfully to be begotten, and to the heirs male of the body of such second son lawfully issuing; and for want of such issue, then to the use and behoof of the third son of the said *Charles* lord *Gerrard* on the body of the said *Jane Digby* lawfully to be begotten, and to the heirs male of the body of such third son lawfully issuing; and for want of such issue, then to the use and behoof of all and every the son and sons of the said *Charles* lord *Gerrard* on the body of the said *Jane* lawfully to be begotten successively as they shall be in seniority of age and priority of birth, one after another, and of the heirs males of their respective bodies lawfully to be begotten, always preferring the elder son and the heirs male of his body before the younger and the heirs male of his body to be begotten; and for want of such issue, or in case that the said *Jane* shall happen to be with child at the time of the decease of the said *Charles* lord *Gerrard*, then to the use and behoof of the said *Jane* until her death, or the birth or delivery of such child or children of whom or which she the said *Jane* shall be so pregnant at the time of the death of the said *Charles* lord *Gerrard*, which shall first happen, and afterwards to the use and behoof of the first son of the said *Charles* lord *Gerrard* on the body of the said *Jane* begotten, and to the heirs male of the body of such first son lawfully to be begotten; and for want of such issue, to the use of all and every the sons of the said *Charles* lord *Gerrard* on the body of the said *Jane* lawfully to be begotten, and of their heirs males of their respective bodies to be begotten successively; and for want of such issue in case the said *Charles* lord *Gerrard* should have any issue female living by him on the body of the said *Jane* begotten, then to the use and behoof of them the said *Edward Littleton*, *Walter Chetwind*, *Thomas Kinnersley* and *William Chetwind*, their executors, administrators and assigns, from the day of the death of the said *Charles* lord *Gerrard*, for and during the term and space of 500 years from thence next following and fully to be compleat and ended; and after the end, expiration, surrender or other determination of the said term, to the use and behoof of the heirs male of the body of the said *Thomas* lord *Gerrard* great grandfather of the said *Charles* lord *Gerrard*; and for want of such issue, then to the use and behoof of the right heirs of the said *C*[illegible] lord *Gerrard* for ever, by virtue of which said [illegible] and also by force of the said act for transferring of [illegible] possession, the said *Charles* lord *Gerrard* was seised of [illegible]

[illegible]

If only daughters then to trustees for 500 years.

capital meſſuage the head of the ſaid barony with the appurtenances to him and his heirs until the time of the ſolemnization of the ſaid intended marriage; and being ſo ſeiſed thereof, the ſaid marriage between the ſaid *Charles* lord *Gerrard* and the ſaid *Jane Digby* afterward, to wit, on the 30th day of *November* in the 12th year of the reign of the ſaid late king *Charles* the ſecond, at *Gerrard's Bromley* aforeſaid was ſolemnized; and the ſaid *Charles* lord *Gerrard* was then and there eſpouſed and married to the ſaid *Jane* according to the rites of the church of *England*, whereby the ſaid *Charles* lord *Gerrard* was ſeiſed of the ſaid capital meſſuage being the head of his ſaid barony with the appurtenances in his demeſne as of freehold for the term of his life, the remainder thereof appertaining in form aforeſaid; and being ſo ſeiſed thereof, he the ſaid *Charles* lord *Gerrard* afterwards had iſſue of the body of the ſaid *Jane* his then wife begotten, to wit, the ſaid *Digby*, afterwards lord *Gerrard*, his only ſon, to wit, at *Gerrard's Bromley* aforeſaid: and afterwards the ſaid *Charles* lord *Gerrard* died there without iſſue female of his body iſſuing, after whoſe death the ſaid barony deſcended to the ſaid *Digby* lord *Gerrard* as ſon and heir of the ſaid *Charles* lord *Gerrard*; and the ſaid *Digby* lord *Gerrard* named in the demand aforeſaid into the ſaid capital meſſuage with the appurtenances (being the head of his ſaid barony as before is ſet forth) entered and was ſeiſed thereof in his demeſne as of fee-tail, that is to ſay, to him and his heirs male of his body iſſuing, with remainder thereof to his heirs male, and of the barony and honour aforeſaid as of fee-tail and of right, and was commorant and reſiant in the ſaid capital meſſuage; and being ſo ſeiſed thereof, he the ſaid *Digby* lord *Gerrard* afterwards at *Gerrard's Bromley* aforeſaid died ſo ſeiſed thereof, and there commorant without iſſue male of his body iſſuing, whereby the ſaid barony and the remainder of the ſaid capital meſſuage the head of the ſaid barony with the appurtenances above limited to the heirs male of the body of the ſaid *Thomas* lord *Gerrard* deſcended from him the ſaid *Digby* lord *Gerrard* to him the ſaid *Charles* now lord *Gerrard* as couſin and heir male of the body of the ſaid *Thomas* lord *Gerrard*, that is to ſay, as ſon and heir of *Richard Gerrard* the ſon and heir of *John Gerrard* the ſon of the ſaid *Thomas* lord *Gerrard* and brother of the ſaid *Gilbert* lord *Gerrard*, whereby he the ſaid *Charles* now lord *Gerrard* entered into the ſaid capital meſſuage with the appurtenances, being the head of his ſaid barony, and was and yet is ſeiſed thereof in his demeſne as of fee-tail, to wit, to him and the heirs male of the body of the ſaid *Thomas* lord *Gerrard* iſſuing, and of the barony aforeſaid as of fee-tail and right; and this he is ready to

Deſcent from *Charles* lord *Gerrard* to *Digby* lord *Gerrard*,

then to *Charles* lord *Gerrard*

to verify: whereupon he prays judgment if the ſaid *Elizabeth* ought to have her dower of the ſaid capital meſſuage with the appurtenances (being the head of the barony of him the ſaid *Charles* now lord *Gerrard*, as before is ſet forth) of the endowment of the ſaid *Digby* lord *Gerrard* heretofore her huſband; with this, that he the ſaid *Charles* now lord *Gerrard* will further verify that he the ſaid *Charles* now lord *Gerrard* after the death of the ſaid *Digby* lord *Gerrard*, and before the day of obtaining of the ſaid original writ of the ſaid *Elizabeth*, to wit, on the 20th day of *March* in the third year of the reign of the lord *James* the ſecond now king of *England*, &c. at *Gerrard's Bromley* aforeſaid aſſigned to the ſaid *Elizabeth* divers meſſuages, lands and tenements with the appurtenances, of a great yearly value, to wit, being of the yearly value of 400*l.* being the full third part of the other meſſuages and lands which were of the ſaid *Digby* lord *Gerrard* her late huſband, whereof the ſaid *Elizabeth* was dowable, to have to her the ſaid *Elizabeth* for the term of her life in the name of her dower happening to her of the ſaid other meſſuages and lands, beſides the tenements aforeſaid in the demand aforeſaid mentioned, which were of the ſaid *Digby* lord *Gerrard* heretofore her huſband, in the ſeveral counties of *Stafford* and *Cheſter*; to which ſaid aſſignment of dower of the ſaid other meſſuages and lands the ſaid *Elizabeth* then agreed and accepted thereof, to wit, at *Gerrard's Bromley* aforeſaid; and as to the ſaid hundred of *Pynehill*, and one hundred and one ſhillings rent, being the reſidue of the tenements aforeſaid with the appurtenances in the demand aforeſaid above ſpecified, he the ſaid *Charles* now lord *Gerrard* ſaith that he the ſaid *Charles* now lord *Gerrard* from the time of the death of the ſaid *Digby* lord *Gerrard* always hitherto hath been and yet is ready to render to the ſaid *Elizabeth* her dower of the ſame hundred and rent; and he here in court renders the ſame to her, &c. whereupon ſhe the ſaid *Elizabeth* prays judgment and ſeiſin of the third part of the ſaid hundred and rent with the appurtenances, to be adjudged to her, &c. therefore it is conſidered that the ſaid *Elizabeth* do recover her ſeiſin againſt the ſaid *Charles* of the ſaid third part of the ſaid hundred and rent with the appurtenances; and the ſaid *Charles* in mercy, &c.

Averment that the tenant did aſſign other lands for the demandant's dower,

to which ſhe agreed.

And as to the demand of the 3d part of the hundred and rent, that tenant is ready to render, &c.

Judgment for the demandant for the 3d part of the hundred and rent.

And the ſaid *Elizabeth* as to the plea of the ſaid *Charles* as to the ſaid capital meſſuage called *Bromley Hall* with [illegible] purtenances above pleaded in bar ſaith, that th[illegible] nd the matter in the ſame contained, are not ſu[illegible] w to bar her the ſaid *Elizabeth* from having [illegible] he ſaid capital meſſuage with the appurte[illegible] he hath no neceſſity, neithe[illegible] he [illegible] and

Demurrer to the other part of the plea.

land to answer to the said plea in manner and form aforesaid above pleaded; and this she is ready to verify: wherefore for want of a sufficient answer in this behalf she the said *Elizabeth* prays judgment and her dower of the said capital messuage with the appurtenances, to be adjudged to them, *&c.*

Joinder in demurrer.

And the said *Charles* lord *Gerrard* since he hath above alledged sufficient matter in law in his said plea as to the said capital messuage called *Bromley Hall* with the appurtenances to bar the said *Elizabeth* from having her dower aforesaid of the same capital messuage with the appurtenances, which he is ready to verify; which said matter the said *Elizabeth* doth not deny, nor in any way answereth to the same, but wholly refuses to admit that averment, as before prays judgment, and that the said *Elizabeth* may be barred from having her dower of the said capital messuage with the appurtenances: and because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties aforesaid here until in eight days of Saint *Hilary*, to hear their judgment thereupon, for that they the said justices here are not yet, *&c.*

Judgment *per tot' cur'* for the demandant in *C. B.* which was affirmed in *B. R.* upon a writ of error.

Pleas before our Lord the King at Westminster *of the Term of Saint* Hilary *in the seventh Year of the Reign of our Lord* William *the Third, now King of* England, &c. Roll 697.

Hicks *against* Downing. 1 Ld. Raym. 99.

Action upon the case for negligently keeping fire, by which a messuage of plaintiff demised to defendant was burnt.

Somersetshire, (to wit) BE it remembered that heretofore, to wit, in the term of Saint *Michael* last past before the lord the king at *Westminster* came *Sarah Hicks* widow, by *Thomas Callow* her attorney, and brought into the court of our said lord the king then there her certain bill against *John Downing* in the custody of the marshal, *&c.* of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, (to wit) *Somersetshire,* (to wit) *Sarah Hicks* widow complains of *John Downing* being in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, for that, to wit, That whereas the said *Sarah* on the 26th day of *January* in the year of our Lord

Lord 1692 was lawfully possessed of and in a certain messuage situate, lying and being in *East Dundry* in the county aforesaid, for a certain term of years then and as yet to come and unexpired; and being so possessed thereof, she the said *Sarah* the same day and year abovesaid at *East Dundry* aforesaid demised the messuage aforesaid (among other things) to the said *John Downing* to have and to hold to the said *John Downing* from the 25th day of *March* then next following for the term of three years, if the said *Sarah Hicks* and *John Downing*, and *Thomas Downing* and *Edith* the father and mother of him the said *John Downing* should so long live: by virtue of which said demise the said *John Downing* afterwards, to wit, on the 26th day of *March* in the year of our Lord 1693 entered into the messuage aforesaid, and (among other things) was possessed thereof for the said term of three years above demised to him the reversion thereof belonging to her the said *Sarah* for the residue of the said term first above mentioned: and the same *Sarah* in fact saith, that as well the said *Thomas Downing* and *Edith* as the said *John Downing* are yet in being and in full life, to wit, at *East Dundry* aforesaid: nevertheless the said *John Downing* well knowing the premisses, but contriving and maliciously intending very much to damnify and aggrieve her the said *Sarah* in this behalf, he the said *John Downing* on the 20th day of *June* in the year of our Lord 1695, (being so possessed of the messuage aforesaid, as before is set forth, the reversion thereof belonging to her the said *Sarah* in form aforesaid) so negligently and improvidently kept his fire in the messuage aforesaid, that by reason thereof the same messuage was then burnt, and is wholly ruined, whereupon she the said *Sarah* saith that she is injured, and hath sustained damage to the value of 500*l.* and thereupon she brings suit, &c.

Imparlance.

And now at this day, to wit, *Thursday* next after eight days of Saint *Hilary* in this same term, until which day the said *John* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Sarah* by her said attorney as the said *John* by *Samuel Brewster* his attorney; and the said *John Downing* defends the force and injury when, &c. and saith that he is not thereof guilty; and of this he puts himself upon the country, and the aforesaid *Sarah* likewise: therefore let a jury come thereupon before the lord the king at *Westminster* on *Wednesday* next after eight days of the purification of the blessed *Mary*; and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c.

Not guilty.

Entered

Entered of Easter *Term in the 7th Year of* William *the Third.* 1 Ld. Raym. 192.

Reynoldson *against* Blake and the Bishop of London.

Quare impedit of the church of St. *Andrew Wardrobe.*

London, (to wit) HENRY *Bishop* of *London* and *Robert Blake* clerk were summoned to answer *Thomas Reynoldson*, *William Bradford* and *George Woolfe*, of a plea that they permit them to present a fit person to the church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, which is void, and belongs to their gift, &c. And whereupon the said *Francis*, *George* and *William* by *Joseph Yate* their attorney say, that in the late terrible conflagration of the city of *London*, hrppening on the second day of *September* in the year of our Lord 1666, as well the parish church of Saint *Ann Blackfriars*, in the ward of *Farringdon Within*, as the said parish church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, in the ward of *Castle Baynard*, and divers other parish churches within the city of *London* were burnt; and they the said *Francis*, *William* and *George* further say, That by a certain act in the parliament of the said lord *Charles* the second late king of *England*, &c. holden at *Westminster* in the county of *Middlesex* in the 22d year of his reign, set forth, (amongst other things) it is enacted by the authority of the same parliament, That the parish of *Alhallows Breadstreet* and the parish of Saint *John* the evangelist within the same city should be united into one parish, and the church before belonging to the parish of *Alhallows Breadstreet* should be rebuilded, and should be the parish church of the said parishes so united; and that the parish of Saint *Andrew Wardrobe* and the parish of Saint *Ann Blackfriars* within the said city should be united into one parish, and the church before belonging to the said parish of Saint *Andrew Wardrobe* should be the parish church of the said parishes so united. And by the same act it was further enacted, That the several and respective patrons of the said churches so united, should and might present by turns to that church only, which by the said act was appointed to be rebuilded and established for the parish church of the parishes so united as aforesaid; and that the first presentment to that church should be made by the patron of such of the said churches, the endowments whereof were of the greatest yearly value, as by the same act

The fire of *London* 1666. St. *Ann Blackfriars* and St. *Andrew's Wardrobe* were burnt.

The act for union of several parish churches,

particularly St. *Ann's* and *Andrew's*, and St. *Andrew's Wardrobe* to be the parish church.

The patrons to present by turns.

Who to present the first time.

act (among other things) is more fully manifest and appeareth. And they the said *Francis*, *William* and *George* further say, that at the time of the making of the said act of parliament, the endowment of the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, was of greater yearly value than the endowment of the vicarage of the said church of Saint *Ann Blackfriars*, to wit, at *London* in the parish of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle* in the ward of *Castle Baynard* aforesaid; and that at the said time of the making of the act of parliament aforesaid one *Thomas Gouge* was seised in his demesne as of fee of and in the rectory impropriate of the said parish of Saint *Ann Blackfriars* in the ward of *Farringdon Within*, to which the advowson of the vicarage of the parish church of Saint *Ann Blackfriars* in the ward aforesaid then did belong, and he was the undoubted patron of the same vicarage; and that the lord *Charles* the second late king of *England*, at the said time of the making of the said act of parliament, was the undoubted patron of the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, and was seised of the advowson of the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle* in the ward of *Castle Baynard* aforesaid, as of fee and right, in right of his crown of *England*; and that the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, in the ward of *Castle Baynard*, at the said time of the making of the said act of parliament, was full of one *James Cade*, doctor of divinity, then rector of the same parish, and that the said *Thomas Gouge* being so seised of the aforesaid rectory of Saint *Ann Blackfriars*, to which, &c. he the said *Thomas Gouge* afterwards, to wit, on the 29th day of *April* in the 25th year of the reign of the said lord *Charles* the second, late king of *England*, &c. at *London* aforesaid, in the parish of Saint *Andrew Wardrobe* aforesaid, in the ward of *Castle Baynard* aforesaid, by his writing indented made between the said *Thomas Gouge*, by the name of *Thomas Gouge* late of the parish of Saint *Sepulchre*, *London* clerk, son and heir of *William Gouge* late of *Blackfriars*, *London* doctor of divinity deceased of the one part, and *Benjamin Whichcott* of *London* doctor of divinity, *John Elston* feltmaker, *Francis Reynoldson* taylor, *John Young* the elder stonecutter, *Peter Sambrooke* apothecary, *William Bradford* taylor, *William Lawrence* baker, *Thomas Flint* feltmaker, *Andrew Hedges* taylor, *Robert Tipne* clothworker, *Richard Boote*, *Henry Johnson* victualler, *John Kne* feltmonger, *Henry Hills* printer, *John Crapp* woodmonger, and *George Woolfe* taylor, inhabitants within the precinct of *Blackfriars London* of

St. *Andrew's* of greater value.

At the time of the act *Thomas Gouge* was seised in fee of *Blackfriars*.

and K. *Charles* 2. was patron of St. *Andrew's*.

At the time of the act *J. C.* was incumbent of St. *Andrew's Wardrobe*.

Thomas Gouge sells his advowson of *Blackfriars* to several of the inhabitants in fee.

of the other part, the counterpart whereof, sealed with the seal of the aforesaid *Thomas Gouge*, they the said *William*, *Francis* and *George* bring here into court, the date whereof is the same day and year, gave and granted to the said *B. W.* &c. (naming the rest of the grantees) the said rectory of Saint *Ann Blackfriars*, to which, &c. To have and to hold the said rectory of Saint *Ann Blackfriars*, to which, &c. to the said grantees (naming them) and to their heirs and assigns for ever; by reason whereof the said grantees (naming them) were, and became seised in their demesne as of fee of and in the said rectory impropriate of Saint *Ann Blackfriars* aforesaid, to which, &c. with the appurtenances; and that afterwards, to wit, on the last day of *July* in the 25th year of the reign of the said lord *Charles* the second late king of *England*, &c. the aforesaid *James Cade*, at *London* aforesaid, in the parish of Saint *Andrew Wardrobe* aforesaid, in the ward of *Castle Baynard* aforesaid died; by whose death the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, in the ward of *Castle Baynard* aforesaid, was first void after the making of the said act of parliament; and thereupon the said late king *Charles* the second, according to the tenor and purport of the said act, in his turn presented one *John Stoning* his clerk to the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, being so void; who, upon the presentation of him the said late king, was there lawfully admitted, instituted and inducted in the same, in the time of peace, in the time of him the said late king *Charles* the second; which said presentation was the first and next presentation made to that church after the making of the act aforesaid; and that the church being full of the said *John Strong*, the said *B. W. J. E. J. Y. P. S. W. L. T. F. A. H. R. T. R. B. H. J. J. K. H. H.* and *J. C.* at *London* aforesaid in the parish of Saint *Andrew Wardrobe* aforesaid in the ward of *Castle Baynard* aforesaid died, whereby the said *Francis Reynoldson*, *William Bradford* and *George Woolfe* were seised of the said rectory of Saint *Ann Blackfriars*, to which, &c. in their demesne as of fee, by right of survivorship, and by virtue of the act of parliament aforesaid had the right of presenting to the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle*, when vacant, in their turn, as patrons of the said vicarage of Saint *Ann Blackfriars* aforesaid: and that the said *John Stoning* afterwards, to wit, on the 15th day of *August* in the 6th year of the reign of the lord the now king and of the lady *Mary* the late queen of *England*, &c. at *London* aforesaid in the parish of Saint *Andrew Wardrobe* aforesaid,

J. C. died, by which St. *Andrew's* was first void after the act, and *Charles* 2d presented *J. S.*

who was instituted and inducted.

The inhabitants of *Blackfriars* all dead but the plaintiffs.

J. S. the king's incumbent dies.

aforesaid in the ward of *Castle Baynard* aforesaid died; by whose death the said church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle* was void, by reason whereof it belongeth to them the said *Francis*, *William* and *George* to present, as in their turn a fit person to the church of Saint *Andrew Wardrobe*, otherwise Saint *Andrew* near *Baynard's Castle* aforesaid, being so void; and the aforesaid *Henry* and *Robert Blake* unjustly hinder them: whereupon they say that they are injured, and have damage to the value of 100 *l.* and thereupon they bring suit, &c.

Whereby the plaintiffs as the surviving grantees ought to present.

To this declaration there is a general demurrer, and a joinder in demurrer.

Pleas before our Lord the King at Westminster *of the Term of the Holy* Trinity *in the seventh Year of the Reign of* William *the Third, now King of* England, &c. Roll 176.

Bacon *against* Dubarry. 1 Ld. Raym. 246.

London, (to wit) BE it remembered that heretofore, to wit, in the term of *Easter* last past before the lord the king at *Westminster* came *Josiah Bacon* by *William Baker* his attorney, and brought into the court of the said lord the king then there his certain bill against *David Dubarry*, otherwise called *David Dubarry* of *London* merchant, in the custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *London*, (to wit) *Josiah Bacon* complains of *David Dubarry*, otherwise called *David Dubarry* of *London* merchant, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, of a plea that he render to him 600 *l.* of lawful money of *England*, which he owes to him and unjustly detains, for that, to wit, That whereas the aforesaid *David* on the 8th day of *November* in the year of our Lord 1694, at *London* in the parish of the blessed *Mary of the Arches* in the ward of *Cheape*, by his certain writing obligatory, sealed with the seal of him the said *David*, and now here shewn to the court of the said lord the king, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to the aforesaid *Josiah* in the aforesaid 600 *l.* to be paid to him the said *Josiah* when he should be thereunto requested: nevertheless the aforesaid

Debt upon a bond.

David, although often requested, &c. hath not yet paid the aforesaid 600 *l.* to the aforesaid *Josiah*, but hath hitherto altogether denied, and as yet doth deny to pay the same to him, to the damage of him the said *Josiah* of 100 *l.* and thereupon he brings suit, &c.

Imparlance.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *David* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the aforesaid *Josiah* by his attorney aforesaid as the aforesaid *David* by *John Green* his attorney; and the said *David* defends the force and injury when, &c. and prays *oyer* of the writing obligatory aforesaid; and it is read to him, &c. He also prays *oyer* of the condition of the same writing obligatory aforesaid, and it is read to him in these words, (to wit) The condition of this obligation is such, That if the above-bounden *David Dubarry*, for and on the behalf of *Jacob Derutter* of *Hamborough* merchant, his executors and administrators, do and shall well and truly stand to, obey, abide, observe, perform, fulfil and keep the award, arbitrament, order, final end, determination and judgment of *Maurice Williams*, *Nicholas Cutler* and *Michael Milford* of *London* merchants, or any two of them, arbitrators, as well on the part and behalf of the above named *Josiah Bacon*, as of the said *David Dubarry*, and by their mutual assents and consents indifferently elected, named and chosen to arbitrate, award, order, judge, determine, and a final end to make, of, for, upon and concerning all, and all manner of action and actions, cause and causes of action, suits, debts, accounts, reckonings, sum and sums of money, covenants, contracts, promises, trespasses, damages, bonds, bills, specialties, judgments, extents, executions, strifes, differences, controversies, matters, claims and demands whatsoever, as now are, or at any time before the date above written, have been moved, stirred up or depending between the said *David Dubarry* as attorney to the said *Jacob Derutter* of the one part, and the said *Josiah Bacon* of the other part, for, touching and concerning certain accounts between the said *Josiah Bacon* and the said *Jacob Derutter*, so as the said award, arbitrament, order, final end, and determination and judgment of the said arbitrators, or any two of them, of and upon the premisses, be made and set down in writing, indented under their hands and seals, and be delivered, or ready to be delivered up unto the said parties, respectively in difference, requiring the same at or in the now dwelling-house of *John Chambers* scrivener, situate in *Lombard-street London*, on or before

Oyer of arbitration bond and condition.

before the one and twentieth day of this instant *November*, then this obligation to be void, or else to stand in full force and virtue; which being read and heard, he the said *David Dubarry* saith that the aforesaid *Josiah Bacon* ought not to have or maintain his aforesaid action thereupon against him, because he saith that the aforesaid *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, in the condition aforesaid named, or two of them, did not make any award in writing indented under their hands and seals, of, for and concerning the premisses aforesaid in the condition aforesaid above specified upon or before the one and twentieth day of *November* in the condition aforesaid mentioned, according to the form and effect of the condition aforesaid; and this he is ready to verify: whereupon he prays judgment if the aforesaid *Josiah Bacon* ought to have or maintain his aforesaid action against him, &c.

Plea that the arbitrators made no award.

And the aforesaid *Josiah Bacon* saith that he by any thing by the aforesaid *David Dubarry* above in pleading alledged ought not to be barred from having his action aforesaid thereupon, because he saith that after the making the writing obligatory aforesaid, to wit; upon the 21st day of *November* in the year of our Lord 1694, in the condition aforesaid specified, at *London* aforesaid in the parish and ward aforesaid, the aforesaid *Nicholas Cutler* and *Michael Milford*, two of the arbitrators in the condition aforesaid above specified, took upon themselves the burthen of arbitrating and ordering of and concerning the premisses in the condition aforesaid above-mentioned, and made their award in writing indented under their hands and seals between the parties, of and concerning the premisses in the condition aforesaid mentioned, by which said award here brought into court they the same arbitrators, reciting that whereas the aforesaid *David*, for and on the behalf of *Jacob Derutter* of *Hambrough* merchant, and the aforesaid *Josiah*, by interchangeable obligations bearing date the 8th day of the then instant *November*, were bound to each other in 600 *l.* conditioned to stand to the award of the said *Maurice Williams*, *Nicholas Cutler* and *Michael Milford*, or any two of those arbitrators, mutually between themselves chosen to adjudge, determine, and finally to make an end of, and in all and all manner of action and actions, cause and causes of action, suits, debts, accounts, reckonings, sum and sums of money, covenants, contracts, promises, trespasses, damages, bonds, bills, specialties, judgments, extents, executions, strifes, differences, controversies, matters, claims and demands whatsoever, which then were, or at any time before the date of the writing obligatory aforesaid had been

Plaintiff replies an award.

The award set forth.

 moved,

moved, ſtirred up or depending between the ſaid *David Dubarry* (as attorney to the ſaid *Jacob Derutter*) and the ſaid *Joſiah Bacon* touching the accounts between the ſaid *Joſiah Bacon* and the ſaid *Jacob Derutter*, ſo that the award and determination of the ſaid arbitrators, or of any two of them, ſhould be made in writing indented under their or any two of their hands and ſeals, ready to be delivered to the aforeſaid parties in difference requiring the ſame, at or in the then and now dwelling houſe of *John Chambers* ſcrivener, ſituate in *Lombard-ſtreet*, upon or before the ſaid one and twentieth day of *November*, as by the ſaid obligations, and the conditions of the ſame, more fully appears: the ſaid *Nicholas Cutler* and *Michael* did award and order the aforeſaid *David Dubarry*, his executors, adminiſtrators or aſſigns, on the part of the aforeſaid *Jacob Derutter*, to pay or cauſe to be paid to the aforeſaid *Joſiah* his executors, adminiſtrators or aſſigns, the ſum of 345 *l.* 6 *s.* 10 *d.* of lawful money of *England*, on or before the 2d day of *January* then next following; and they did further award and order that the aforeſaid *Joſiah Bacon* and the aforeſaid *David Dubarry*, on the behalf of the aforeſaid *Jacob Derutter*, upon the payment of the aforeſaid ſum of money, as before ſet forth ſhould ſign, ſeal and lawfully execute and deliver to and for the uſe of each of them, a good and ſufficient releaſe of all and all manner of action and actions, cauſe and cauſes of action, ſuits, debts, accounts, reckonings, ſum and ſums of money, covenants, contracts, promiſes, treſpaſſes, damages, bonds, bills, ſpecialties, judgments, extents, executions, ſtrifes, differences, controverſies, matters, claims and demands whatſoever touching the ſaid accounts, as by the award aforeſaid appears. And the ſaid *Joſiah* in fact ſaith, that the award aforeſaid in form aforeſaid made afterwards, to wit, on the aforeſaid one and twentieth day of *November* in the year aboveſaid at *London* aforeſaid in the pariſh and ward aforeſaid, was delivered as well to the aforeſaid *Joſiah* as to the aforeſaid *David*, according to the form and effect of the condition of the writing obligatory aforeſaid. And the ſaid *Joſiah* further ſaith, that although he the ſaid *Joſiah*, from the time of making the award aforeſaid until this time, hath well and truly obſerved, performed and kept all and ſingular the matters and things in the award aforeſaid contained on the part of him the ſaid *Joſiah* to be performed and fulfilled according to the form and effect of that award; proteſting alſo that the aforeſaid *David Dubarry* from the time of making the ſame award until this time hath not obſerved, performed or fulfilled the award aforeſaid in any thing on his part to be performed and fulfilled,

fulfilled, according to the form and effect of that award, in fact he the said *Josiah* saith, that the aforesaid *David Dubarry* hath not paid or caused to be paid to the aforesaid *Joseph* the aforesaid sum of 345 *l.* 6 *s.* 10 *d.* on or before the aforesaid second day of *January*, which he then ought to have paid to him according to the form and effect of the award aforesaid; and this he is ready to verify: whereupon he prays judgment and his debt aforesaid, together with his damages by occasion of the detention of that debt, to be adjudged to him, *&c.*

Breach assigned.

Demurrer, and joinder in demurrer.

N. The judgment was for the defendant, chiefly for this reason, *viz.* That the submission is on behalf of *Derutter*, and nothing is awarded to *Derutter*, for he has no advantage of this award, because the release is awarded to be made to *Dubarry*, to the use of *Dubarry* so that *Derutter* has no benefit by it.——But *per Curiam*, it had been otherwise if the award had been, that the plaintiff should release to *Derutter*, or to the defendant *for the use of Derutter*, or to the defendant *Dubarry generally*, *without saying to the use of Dubarry*; for then it might have been intended to the use of *Derutter*, *because the submission was on behalf of Derutter.* See the report. And see also the case of *Cayhill* against *Fitzgerald*, *Easter* 17 *Geo.* 2. *B. R.*

Pleas before the Lord the King at Westminster *of the Term of* Easter *in the eighth Year of the Reign of our Lord* William *the Third, now King of* England, &c. Roll 291.

Freeman and others *against* Bernard and others. 1 Ld. Raym. 247.

London, (to wit) BE it remembered that heretofore, to wit, in the term of Saint *Hilary* in the sixth year of the reign of our lord *William* the third, now king of *England*, *&c.* before the same lord the king at *Westminster* came *Thomas Freeman* and *Thomas Haggar* by *Benjamin Mould* their attorney, and brought into the court of the said lord the king then there their certain bill against *Samuel Bernard* and *Thomas Rodbard* in the custody of the marshal, *&c.*, of a plea of trespass upon the case, *&c.* and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words (to wit) *London*, (to wit) *Thomas Freeman*

Declaration upon an agreement to deliver six bags of hops before 25th of *December*.

Freeman and *Thomas Haggar* complain of *Samuel Bernard* and *Thomas Rodbard* being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas on the 8th day of *August* in the year of our Lord 1693, at *London* aforesaid, to wit, in the parish of Saint *Mary of the Arches* in the ward of *Cheape*, it was agreed between them the said *Thomas Freeman* and *Thomas Haggar* and the aforesaid *Samuel* and *Thomas Rodbard* in manner and form following, that is to say, that the aforesaid *Samuel Bernard* and *Thomas Rodbard* should deliver to the aforesaid *Thomas Freeman* and *Thomas Haggar* sixteen bags of good new hops of the then next growth, good brewers ware, at thirty and four shillings by the hundred weight, and that they should be delivered on or before the 25th day of *December* then next following; and thereupon in consideration that the aforesaid *Thomas Freeman* and *Thomas Haggar* had paid to the aforesaid *Samuel* and *Thamas Rodbard* one piece of gold coin called a guinea of lawful money of *England* in part of payment thereof, and then and there at the special instance and request of them the said *Samuel* and *Thomas Rodbard* had assumed upon themselves, and to them the said *Samuel* and *Thomas Rodbard* had faithfully promised to perform the agreement aforesaid in all things on the part of them the said *Thomas Freeman* and *Thomas Haggar* to be performed or fulfilled according to the form and effect of the agreement aforesaid, they the said *Samuel* and *Thomas Rodbard* assumed upon themselves and to the aforesaid *Thomas Freeman* and *Thomas Haggar* then and there faithfully promised that they the said *Samuel* and *Thomas Rodbard* would well and faithfully perform and fulfil the agreement aforesaid in all things on the part of them the said *Samuel* and *Thomas Rodbard* to be performed or fulfilled: nevertheless the aforesaid *Samuel* and *Thomas Rodbard* not at all regarding their promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Thomas Freeman* and *Thomas Haggar* in this behalf, have not delivered the aforesaid sixteen bags of hops, or any parcel thereof on or before the aforesaid 25th day of *December* next following after the making of the agreement aforesaid, or at any time afterwards until this time to them the said *Thomas Freeman* and *Thomas Haggar*, or to either of them, but have hitherto wholly refused, and as yet do refuse to deliver the same to them. And also whereas afterwards, to wit, on the aforesaid 8th day of *August* in the year of our Lord abovesaid at *London* aforesaid in the parish and ward aforesaid, a certain other agreement was had and made in writing between the aforesaid *Samuel* and *Thomas Rodbard* and them the

Mutual promises to perform the agreement.

Breach in not delivering the hops.

A 2d count upon another agreement in writing.

the said *Thomas Freeman* and *Thomas Haggar* in form following, that is to say, that the aforesaid *Samuel* and *Thomas Rodbard* should deliver to them the said *Thomas Freeman* and *Thomas Haggar* sixteen other bags of good new hops of the then next growth, good brewers ware, at the rate of 34*s*. by the hundred, and that they should be delivered upon or before the 25th day of *December* then next following, which said written agreement was left in the hands of one *Thomas Ruck*. And whereas afterwards, to wit, on the same 8th day of *August* in the year abovesaid at *London* aforesaid in the parish and ward aforesaid, a certain discourse was had and moved between the aforesaid *Samuel* and *Thomas Rodbard* and them the said *Thomas Freeman* and *Thomas Haggar* of and concerning the agreement aforesaid last mentioned, and of and concerning the delivery of two loads of hops to them the said *Thomas Freeman* and *Thomas Haggar* to be made by the aforesaid *Samuel* and *Thomas Rodbard*, and upon that discourse between the aforesaid *Samuel* and *Thomas Rodbard* and them the said *Thomas Freeman* and *Thomas Haggar*, two other loads of hops were to be delivered according to the said agreement so as afore set forth left in the hands of the aforesaid *Thomas Ruck*, and that they the said *Thomas Freeman* and *Thomas Haggar* should accept the hops aforesaid last mentioned according to the aforesaid agreement last before recited; and thereupon in consideration that they the said *Thomas Freeman* and *Thomas Haggar* then and there at the special instance and request of the aforesaid *Samuel* and *Thomas Rodbard* had paid to the aforesaid *Samuel* and *Thomas Rodbard* one other piece of gold coin called a guinea, of lawful money of *England*, in part of payment for the same hops last mentioned, and had assumed upon themselves, and to them the said *Samuel* and *Thomas Rodbard* then and there faithfully promised to perform the agreement aforesaid in all things on the part of them the said *Thomas Freeman* and *Thomas Haggar* to be performed and fulfilled according to the form and effect of the agreement aforesaid last mentioned, they the said *Samuel* and *Thomas Rodbard* assumed upon themselves, and to them the said *Thomas Freeman* and *Thomas Haggar* then and there faithfully promised that they the said *Samuel* and *Thomas Rodbard* would well and faithfully perform and fulfil the agreement aforesaid last mentioned in all things on the part of them the said *Samuel* and *Thomas Rodbard* to be performed and fulfilled: nevertheless the aforesaid *Samuel* and *Thomas Rodbard* not at all regarding their promises and undertakings aforesaid last mentioned made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud them the said *Thomas Freeman* and *Thomas*

A colloquium touching the agreement.

Mutual promises.

Breach.

Thomas Haggar in this behalf, have not delivered, nor hath either of them delivered the aforesaid two loads of hops last mentioned, or any parcel thereof, to them the said *Thomas Freeman* and *Thomas Haggar*, or to either of them, on or before the aforesaid 25th day of *December* next following after the making the promise and undertaking aforesaid last mentioned, or at any time afterwards, but have hitherto altogether refused, and as yet do refuse to deliver the same to them, whereupon they the said *Thomas Freeman* and *Thomas Haggar* say that they are injured, and have sustained damage to the value of 200*l*, and thereupon they bring suit, &c.

Imparlance.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter*, until which day the aforesaid *Samuel* and *Thomas Rodbard* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the aforesaid *Thomas Freeman* and *Thomas Haggar* by their attorney aforesaid as the aforesaid *Samuel* and *Thomas Rodbard* by *John Bernard* their attorney; and they the said *Samuel* and *Thomas Rodbard* defend the force and injury when, &c. and say that the aforesaid *Thomas Freeman* and *Thomas Haggar* ought not to have or maintain their action aforesaid thereupon against them, because they say that after the making of the several promises and undertakings above in the declaration aforesaid specified, to wit, on the second day of *November* in the year of our Lord 1694, at *London* aforesaid, to wit, at the parish of the blessed *Mary of the Arches* in the ward of *Cheape* aforesaid, as well the aforesaid *Thomas Freeman* and *Thomas Haggar*, as the aforesaid *Samuel* and *Thomas Rodbard* did submit and put themselves to the award, order and judgment of Sir *John Parsons*, knt. and *Richard Hammond* brewers, arbitrators as well on the part of the aforesaid *Thomas Freeman* and *Thomas Haggar*, as on the part of them the said *Samuel* and *Thomas Rodbard* indifferently named and chosen to arbitrate, order, adjudge and determine of and upon and concerning all and all manner of action and actions, cause and causes of action, suits, debts, bonds, bills, specialties, executions, accounts, sum and sums of money, differences, controversies, trespasses, damages, claims and demands whatsoever at any time before then had, moved, commenced, prosecuted, done, promised, committed or depending in suit, controversy, question or demand by or between the aforesaid *Thomas Freeman* and *Thomas Haggar* and the aforesaid *Samuel* and *Thomas Rodbard*, for or by reason of any matter, cause or thing whatsoever, so that the aforesaid arbitrators should make and give their award and determination of and concerning the premisses in writing indented under their hands and seals, ready to be delivered to the

A submission to an award pleaded in bar.

aforesaid

aforesaid *Thomas Freeman* and *Thomas Haggar*, *Samuel* and *Thomas Rodbard*, or to either or any of them at or in the mansion-house of *Tobias Wanne* scrivener, in the street called *Bartholomew Lane* near the *Royal Exchange London*, before the first day of *December* then next following. And that afterwards, to wit, on the 29th day of *November* in the year of our Lord 1694, abovesaid at the mansion-house of the aforesaid *Tobias Wanne* in the street called *Bartholomew Lane* aforesaid, near the *Royal Exchange London*, to wit, in the parish of Saint *Bartholomew Exchange* in the ward of *Broad-street*, *London*, the aforesaid *John Parsons* and *Richard Hammond* the arbitrators aforesaid, having taken upon themselves the burthen of the arbitration aforesaid by a certain writing indented under the hands and seals of those arbitrators, and ready to be delivered to the aforesaid *Thomas Freeman* and *Thomas Haggar*, *Samuel* and *Thomas Rodbard*, or to either or any of them, did arbitrate, make and give their award and determination of and concerning the premisses, that the aforesaid *Samuel* and *Thomas Rodbard*, and also the aforesaid *Thomas Freeman* and *Thomas Haggar*, or the several respective executors and administrators of the aforesaid *Samuel* and *Thomas Rodbard*, *Thomas Freeman* and *Thomas Haggar* should mutually sign and seal, and as their act and deed should deliver to and for the use of each other, their executors or administrators respectively, full and sufficient general releases and discharges of all actions, suits, accounts, debts and demands whatsoever in law or equity of or concerning the premisses to the said arbitrators, as before set forth, in any manner submitted. And the aforesaid *Samuel* and *Thomas Rodbard* say that they, from the time of making the said award until this time, were always and still are ready to sign, seal, and as their acts and deeds to deliver to them the said *Thomas Freeman* and *Thomas Haggar* such releases and discharges as by the aforesaid arbitrators are above awarded, if the aforesaid *Thomas Freeman* and *Thomas Haggar* should or would be willing to accept those releases and discharges of the aforesaid *Samuel* and *Thomas Rodbard*; and this they are ready to verify: whereupon they the said *Samuel* and *Thomas Rodbard* pray judgment if the aforesaid *Thomas Freeman* and *Thomas Haggar* ought to have or maintain their action aforesaid thereupon against them, *&c.*

To this the plaintiffs demurred, and defendants join in demurrer.

N. B. *This award of mutual releases was held bad, because there was no satisfaction awarded; and the award has only ordered a means to discharge the action. See the Report of the Case.*

Pleas

Pleas before our Lord the King at Westminster *of the Term of the Holy* Trinity *in the ninth Year of the Reign of our Lord* William *the Third, now King of* England, &c. Roll 359.

Tuberville *against* Stamp. 1 Ld. Raym. 264.

Declaration on the custom of the realm for negligently keeping a fire in the defendant's close, whereby the plaintiff's heath and furze were burnt.

Dorsetshire, (to wit.) BE it remembered that heretofore, to wit, in the term of *Easter* last past before our lord the king at *Westminster* came *Thomas Tuberville* the younger esq; by *Edward Lawrence* his attorney, and brought into the court of the said lord the king then there his certain bill against *John Stamp* gent. in the custody of the marshal, *&c.* of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Dorsetshire*, to wit, *Thomas Tuberville* the younger esq; complains of *John Stamp* gent. being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas according to the law and custom of this realm of *England* hitherto used and approved every man of the same realm is bound to keep his fire safely and securely by day and by night, lest for want of the due keeping of such fire any damage in any manner happen to any person of the same realm: and whereas the said *Thomas* on the 6th day of *April* in the 9th year of the reign of our lord *William* the third now king of *England*, *&c.* was possessed of a certain close of heath lying and being in the parish of *Stoke* in the county aforesaid; and also whereas the said *John* the same day and year abovesaid was likewise possessed of a certain other close of heath next adjoining to the aforesaid close of him the said *Thomas* in the parish and county aforesaid, the said *John* on the day and year and at the place aforesaid so negligently and improvidently kept his fire in the said close of heath of him the said *John*, that for want of the due keeping of the said fire the heath and furzes of him the said *Thomas* to the value of forty pounds in the said close of heath of him the said *Thomas* then growing and being were burnt, to the great damage of him the said *Thomas*, and contrary to the custom aforesaid; whereupon he saith that he is injured, and hath sustained damage to the value of 40 *l.* and thereupon he brings suit, *&c.*

And

And now here at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *John* had leave to impart to the said bill and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Thomas* by his attorney aforesaid as the said *John* by *Samuel Brewster* his attorney; and the said *John* defends the force and injury when, &c. and saith that he is not guilty thereof; and of this he puts himself upon the country, and the aforesaid *Thomas* likewise, &c. Therefore let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the said parties there, &c. Afterwards the process being thereupon continued between the said parties of the plea aforesaid by the jury being thereupon respited between them before the lord the king at *Westminster* until *Saturday* next after three weeks of Saint *Michael* from thence next following, unless the justices of the lord the king, assigned to take the assises in the county of *Dorset* on *Thursday* the 22d day of *July* at *Dorchester* in the county aforesaid by form of the statute, &c. should before come for default of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Thomas Tuberville* the younger by his attorney aforesaid, and the aforesaid justices before whom, &c. have sent here their record before them had in these words, to wit, Afterwards on the day and at the place within contained, before *Edward Ward*, knt. chief baron of the exchequer of the lord the king, and *Thomas Rokeby*, knt. one of the justices of the lord the king assigned to hold pleas before the king himself, justices of him the said lord the king assigned to take the assises in the county of *Dorset* by form of the statute, &c. came the within named *Thomas Tuberville* the younger by his attorney within contained, and the within written *John Stamp* gent. although solemnly required did not come, but made default: therefore let the jury, whereof mention is within made, be taken against him by default: and the jurors of that jury being called, some of them, to wit, *Thomas Notting*, *Henry Kellaway*, *Richard Hambourne*, *John Ford*, *David Haward*, *Mark Dowland*, *Henry Humber*, *James Squib*, *Robert Woolfrays* came, and are sworn upon that jury; and because the rest of the jurors of the same jury did not appear, therefore others of the by-standers by the sheriff of the county aforesaid being chosen for this purpose at the request of the said *Thomas Tuberville*, and by the command of the justices aforesaid are newly appointed, whose names are

Imparlance.

Plea, not guilty.

Venire facias awarded.

Nisi prius.

Postea.

Tales.

are affiled in the panel within written according to the form of the ftatute in fuch cafe lately made and provided: and the jurors newly appointed, to wit, *John Warren*, *William Buffel* and *Nathaniel Payne* being callrd likewife came, who being chofen, tried and fworn together with the other jurors aforefaid before for this purpofe impanelled and fworn to fpeak the truth concerning the matter within contained fay upon their oath, that the aforefaid *John Stump* is guilty of the premiffes within written within laid to his charge, as the faid *Thomas Tuberville* within thereof complains againft him; and they affefs the damages of him the faid *Thomas* by the occafion within written, befides his cofts and charges by him laid out about his fuit in this behalf, to eighteen pounds, and for thofe

Final judgment. cofts and charges to forty fhillings: therefore it is confidered that the aforefaid *Thomas Tuberville* do recover againft the faid *John Stamp* his damages aforefaid by the jury aforefaid in form aforefaid affeffed, and alfo eleven pounds for his cofts and charges to him the faid *Thomas Tuberville* by the court of the faid lord the king now here with his affent adjudged of increafe; which faid damages in the whole in themfelves amount to thirty-one pounds, and the aforefaid *John* in

Mercy. mercy, *&c.*

Pleas inrolled before Sir George Treby, *Knt. and his Companions Juftices of our Lord the King and Lady the Queen, of the Term of Saint* Michael *in the fixth Year of the Reign of the faid Lord the King and Lady the Queen by the Grace of God of* England, &c.

Error. *C. B. Quare Impedit.* Rolls 705, 706.

The King and Queen *againft* the Bifhop of Chefter, Piers and Scrope. 1 Ld. Raym. 292.

Yorkfhire, (to wit) NICHOLAS bifhop of *Chefter*, *Richard Piers*, efq; and *Richard Scrope*, clerk, were fummoned to anfwer to the lord and lady the now king and

and queen of a plea that they permit them the said king and queen to present a fit person to the church of *Bedall* which is void and belongs to their gift, *&c.* And whereupon Sir *Edward Ward* knt. attorney-general of the said lord and lady the now king and queen, who sues in this behalf for the same lord and lady the king and queen, saith for the same lord and lady the king and queen, that the lady *Elizabeth* late queen of *England* was seised of the advowson of the church aforesaid, as of an advowson in gross by itself, as of fee and right, in right of her crown of *England*; and being so seised thereof, by her letters patent sealed under her great seal of *England*, bearing date at *Westminster* in the county of *Middlesex* the 14th day of *February* in the 12th year of the reign of the same late queen, presented one *John Tyms* her clerk to that church being void, as by the record of the inrolment of the said letters patent remaining in the court of chancery of our said lord and lady the now king and queen at *Westminster* aforesaid more fully appears; which said *John Tyms* upon the aforesaid presentation of the aforesaid late queen was admitted, instituted and inducted in the same, in the time of peace in the time of the said late queen; and the aforesaid late queen being seised of the advowson of the church aforesaid as before is set forth, she the said late queen afterwards at *Westminster* aforesaid died seised of such her estate of and in the advowson of the church aforesaid as before is set forth; after the death of which said late queen the advowson of the church aforesaid descended to *James* the first late king of *England*, by which the aforesaid late king *James* the first was seised of the advowson of the church aforesaid, as of an advowson in gross by itself, as of fee and right, in right of his crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *John Tyms*, by which he the said late king *James* the first by his letters patent sealed under his great seal of *England* bearing date at *Westminster* aforesaid the 13th day of *July* in the 19th year of the reign of the same late king *James* the first of *England*, *&c.* presented one *John Wilson* doctor of divinity his clerk, to that church so being void, as by the record of the inrolment of the said letters patent last mentioned in the aforesaid court of chancery of the said lord and lady the now king and queen at *Westminster* aforesaid remaining more fully appears; which said *John Wilson* upon the presentation of the aforesaid late king *James* the first was admitted, instituted and inducted in the same, in the time of peace in the time of the said late king *James* the first; and the aforesaid late king *James* the

Queen *Eliz.* seised in fee of the advowson in gross of the church of *Bedall.*

14th of *February* in the 12th year of her reign presented *Tyms* by her letters patent,

who was admitted, *&c.*

The queen died seised of the advowson, which descended to *James I.*

who was seised in fee.

The church became void by the death of *Tyms.*

James the 1st presented *John Wilson* 13th of *July Anno* 19°

who was admitted, *&c.*

James the 1st died seised and the advowson descended to *Charles* I.

the first being seised of the advowson of the church aforesaid as before is set forth, the same late king afterwards at *Westminster* aforesaid died seised of such his estate thereof, after the death of which said late king *James* the first the advowson of the church aforesaid descended to *Charles* the first late king of *England* as son and heir of the late king *James* the first, by which the aforesaid late king *Charles* the first was seised of the advowson of the church aforesaid* as of an advowson in gross by itself as of fee and right in right of his crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *John Wilson*, by which the same late king *Charles* the first by his letters patent sealed under his great seal of *England* bearing date at *Westminster* the sixth day of *March* in the tenth year of the reign of the same late king *Charles* the first presented one *Henry Wickham* doctor of divinity his clerk, to that church so being void, as by the record of the inrolment of the said letters patent last mentioned in the aforesaid court of chancery of the said lord and lady the now king and queen at *Westminster* remaining more full appears; which said *Henry Wickham* upon the aforesaid presentation of the aforesaid late king *Charles* the first was admitted, instituted and inducted in the same in the time of peace in the time of the said late king *Charles* the first; and the aforesaid late king *Charles* the first being seised of the advowson of the church aforesaid as before is set forth, the church aforesaid became void by the death of the aforesaid *Henry Wickham*, and that one *John Piers* esq; to the same church so being void, not having the right of presenting to the same, but by usurping upon the late lord king *Charles* the first, presented one *William Metcalfe* his clerk, who upon the presentation of the aforesaid *John Piers* was admitted, instituted and inducted in the same; and afterwards the aforesaid late king *Charles* the first being seised of the advowson of the church aforesaid as before is set forth, at *Westminster* aforesaid died seised of such his estate thereof as before is set forth; after whose death the advowson of the church aforesaid descended to *Charles* the second late king of *England* as son and heir of the aforesaid late king *Charles* the first, by which the aforesaid late king *Charles* the second was seised of the advowson of the church aforesaid, as of an advowson in gross by itself as of fee and right in right of his crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *William Metcalfe*, by which the aforesaid late king *Charles* the second by his letters patent sealed under his great seal of *England* bearing date at *Westminster*

The church became void by the death of *Wilson*.

Charles 1st presented Dr. *Wickham*,

who was admitted, &c.

The church became void by the death of Dr. *Wickham*, *John Piers*, presented *Metcalfe* by usurpation, who was admitted, &c.

Charles 1st died seised, and the advowson descended to *Charles* 2d.

The church became void by the death of *Metcalfe*.

Westminster the 28th day of *August* in the 12th year of the reign of the same late king *Charles* the second presented one *Peter Samwayes* doctor of divinity his clerk, to that church so being void, as by the record of the inrolment of the said letters patent last mentioned in the aforesaid court of chancery of the said lord and lady the now king and queen at *Westminster* aforesaid remaining more fully appears; which said *Peter Samwayes* upon the aforesaid presentation of the aforesaid late king *Charles* the second was admitted, instituted and inducted in the same, in the time of peace in the time of the said late king *Charles* the second; and the aforesaid late king *Charles* the second being seised of the advowson of the church aforesaid as before is set forth, he the said late king *Charles* the second afterwards at *Westminster* aforesaid died seised of such his estate thereof, after whose death the advowson of the church aforesaid descended to *James* the second late king of *England* as brother and heir of the aforesaid late king *Charles* the second, by which the aforesaid late king *James* the second was seised of the advowson of the church aforesaid as of an advowson in gross by itself as of fee and right in right of his crown of *England*; which said late king *James* the second being seised of the advowson aforesaid as before is set forth, abdicated himself from the government of this kingdom, by which the advowson aforesaid came [devolved] to them the said lord and lady the now king and queen, whereby they the said lord and lady the now king and queen were and as yet are seised of the advowson of the church aforesaid as of an advowson in gross by itself as of fee and right in right of their crown of *England*; and being so seised thereof, the church aforesaid became void by the death of the aforesaid *Peter Samwayes*, whereupon it belongs to the aforesaid lord and lady the now king and queen to present a fit person to the church aforesaid being so void; and the aforesaid bishop, *Richard Piers* and *Richard Scrope* unjustly hinder them, whereupon the said attorney-general saith for the said lord and lady the now king and queen that they the said king and queen are injured, and have sustained damage to the value of 100 *l.* and thereupon the said attorney-general who sues, &c. in this behalf as aforesaid brings suit, &c.

Charles 2d presented Dr. *Samwayes*,

who was admitted, &c.

Charles 2d died seised, and the advowson descended to *James* 2d.

James 2d being seised abdicated the realm,

by which the advowson came to the now king and queen, who are now seised thereof. And the church became void by the death of *Samwayes*, whereupon it belongs to the king and queen to present.

Entered

Entered of Trinity *Term in the* 10*th Year of King* William *the Third. B. R.* Roll 102.

Pullein Esq; *against* Benson. 1 Ld. Raym. 349.

Yorkshire, (to wit) BE it remembered that heretofore, to wit, in the term of *Easter* last past before the lord the king at *Westminster* came *Thomas Pullein* esq; late sheriff of the county aforesaid by *Charles Sanderson* his attorney, and brought into the court of the said lord the king then there his certain bill against *John Benson*, otherwise called *John Benson* of the same yeoman, in custody of the marshal, &c. of a plea of debt; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, (to wit) *Yorkshire*, (to wit) *Thomas Pullein* esq; late sheriff of the county aforesaid complains of *John Benson*, otherwise called *John Benson* of the same yeoman, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, of a plea that he render to him forty pounds which he oweth to him and unjustly detains, for that, to wit, That whereas the aforesaid *John* on the 20th day of *November* in the 9th year of the reign of the lord *William* the third now king of *England*, &c. at *Barnsley* in the county aforesaid, by his certain writing obligatory sealed with the seal of him the said *John*, and to the court of the said lord the king now here shewn, the date whereof is the same day and year, acknowledged himself to be held and firmly bound to him the said *Thomas*, by the name of *Thomas Pullein* esq; sheriff of the county aforesaid in the aforesaid 40*l.* to be paid to him the said *Thomas* when he should be thereunto requested: nevertheless the aforesaid *John*, although often requested, &c. hath not yet paid to him the said *Thomas Pullein* the aforesaid 40*l.* but to pay the same to him hath hitherto altogether denied, and as yet doth deny, to the damage of him the said *Thomas Pullein* of ten pounds, and thereupon he brings suit, &c.

Debt upon a bail bond.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *John* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster*

Imparlance.

minster cometh as well the aforesaid *Thomas* by his attorney aforesaid as, the aforesaid *John* by *William Manlove* his attorney; and the said *John* defends the force and injury when, &c. and prays *oyer* of the writing aforesaid, and it is read to him, &c. he also prays *oyer* of the condition of the said writing, and it is read to him in these words, (to wit) The condition of this obligation is such, that if the above bounden *William Benson* do appear before the lord the king at *Westminster* on *Monday* next after fifteen days of Saint *Martin* to answer to *John Brooke* gent. of a certain plea of trespass, and also to a bill of him the said *John* against the aforesaid *William* for twelve pounds of debt, that then this present obligation shall be void, or else shall stand and remain in its full strength, force and virtue; which being read and heard, he the said *John* saith that he ought not to be charged with the debt aforesaid by virtue of the aforesaid writing, because he says that by a certain act made in the parliament of *Henry* the sixth late king of *England*, holden at *Westminster* in the county of *Middlesex*, on the 25th day of *February* in the 23d year of his reign, of the consideration of the king concerning the great perjuries, extortions and oppressions which were, and had been, in this realm by his sheriffs, under-sheriffs, and their clerks, coroners, stewards of franchises, bailiffs, and keepers of prisons, and other officers in divers counties of this realm, it is ordained and was enacted by the authority of the same parliament, (among other things) that the said sheriffs, and all other officers and ministers aforesaid, should let out of prison all manner of persons by them or any of them arrested, or being in their custody by force of any writ, bill or warrant, in an action personal, or by cause of indictment of trespasses, upon reasonable surety of sufficient persons, having sufficient within the counties where such persons should be so let to bail, or mainprise, to keep their days in such places as the said writs, bills or warrants should require, (such person or persons which were or should be in their ward by condemnation, execution, *capias utlagatum*, or excommunication, surety of the peace, and all such persons as were or should be committed to ward by special commandment of any justices, and vagabonds refusing to serve according to the form of the statute of labourers only except) and that no sheriff, nor any of the officers or ministers aforesaid should take, or cause to be taken, or make any obligation for any cause aforesaid, or by colour of their office, but only to themselves, of any person, nor by any person which should be in their ward by the course of the law, but by the name of their office, and upon condition

Oyer of the bond.

The *St.* of 23 *Hen.* 6. c. 10. pleaded.

 written,

written, that the said prisoners should appear at the day in the said writ, bill or warrant, and in such places as the said writs, bills or warrants should require; and if any of the said sheriffs or other officers or ministers aforesaid should take any obligation in other form by colour of their offices, that it should be void, as by the same act among other things more fully appears. And the said *John* further saith that the writing aforesaid was first delivered by him the said *John* on the 30th day of *November* in the ninth year abovesaid; and that the aforesaid *William Benson* in the condition aforesaid above named at the said time of the delivery and making of that writing at *Barnsley* aforesaid was in ward of the aforesaid *Thomas* as sheriff of the aforesaid county of *York*, being taken and arrested by him the said *Thomas* by pretext of a certain writ of the lord the king directed to him the said sheriff, and returnable before the lord the king at *Westminster* upon a certain day of the term of Saint *Michael* then last past, and he the said *William Benson* being so in ward of the said *Thomas* as before is set forth, he the said *Thomas* on the said 30th day of *November* in the ninth year abovesaid and not before, took the writing obligatory aforesaid with the condition aforesaid, by colour of his office of sheriff of the county aforesaid, of the said *William Benson*, and of him the said *John* as his surety, contrary to the form of the statute aforesaid, to wit, at *Barnsley* aforesaid, and so *that* writing by force of the said statute was, and is void and of no effect in law; * and this he is ready to verify: whereupon he prays judgment if he ought to be charged with the debt aforesaid by virtue of the writing aforesaid, &c.

Averment that the bail bond was executed after the return of the writ and not before.

L. Agar.

Demurrer.

And the aforesaid *Thomas* saith that he by any thing by the aforesaid *John Benson* above in pleading alledged ought not to be barred from having his said action thereupon against him the said *John*, because he saith that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar him the said *Thomas* from having his action aforesaid

* *N. B.* The plaintiff declared on a bond dated the 30th of *November*; the defendant says it was first delivered by him on the 30th of *November*, and not before; he ought to have concluded with a traverse in this manner, *viz.* "Without this, that the aforesaid writing was delivered by him the "said *John* on the 20th day of *November* in the ninth year abovesaid, as the "aforesaid *Thomas* above declares against him, or at any time before the "said 30th day of *November* in the year abovesaid; and this he is ready to "verify, &c." And for want of this traverse the court held the plea ill, and gave judgment for the plaintiff. See the report.

thereupon

thereupon against the aforesaid *John*; to which said plea he the said *Thomas* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient answer in this behalf, he the said *Thomas* prays judgment and his debt aforesaid, together with his damages by occasion of the detention of that debt, to be adjudged to him; and for cause of demurrer in law upon that plea, he the said *Thomas* according to the form of the statute in such case lately made and provided, shews and demonstrates to the court here these causes following, (that is to say) that the plea aforesaid is uncertain, double, and wants form, and doth not answer the declaration of the aforesaid *Thomas*.

E. Northey.

Joinder in demurrer.

And the aforesaid *John* saith that the plea aforesaid by him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to bar him the said *Thomas* from having his said action thereupon against the aforesaid *John*; which said plea, and the matter therein contained, he the said *John* is ready to verify and prove, as the court, &c. And because the said *Thomas* doth not answer to that plea, nor hath hitherto in any manner denied it, he the said *John* as before prays judgment if he ought to be charged with the debt aforesaid by virtue of the writing aforesaid, &c. But because the court of the said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day thereupon is given to the parties aforesaid before the lord the king at *Westminster* until ——— next after ——— for hearing their judgment of and upon the premisses, for that the court of the said lord the king now here thereupon are not yet, &c.

Curia advisare vult.

Pleas before our Lord the King at Westminster *of the Term of the Holy* Trinity *in the tenth Year of the Reign of our Lord* William *the Third, now King of* England, &c. Roll 763.

Johnson *against* Long. 1 Ld. Raym. 370.

Somersetshire, (to wit.) BE it remembered that heretofore, to wit, in the term of Saint *Michael* last past before the lord the king at *Westminster* came *Timothy Johnson* by

 Philip

Philip Hodges his attorney, and brought into the court of our said lord the king then there his certain bill against *John Long* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, (to wit,) *Somersetshire*, (to wit,) *Timothy Johnson* complains of *John Long*, being in the custody of the marshal of the *Marshalsea* of the lord the now king before the king himself, for that, to wit, that whereas the said *Timothy* on the 21st day of *April* in the eighth year of the reign of our lord *William* the third now king of *England*, &c. and always afterwards until this time hath been possessed, and as yet is possessed of a certain ancient workhouse, situate and being in the parish of *Whatley* in the county aforesaid, in which said workhouse on the same 21st day of *April* in the eighth year abovesaid there was and from time whereof the memory of man is not to the contrary there hath been a certain ancient window in the west part of the same workhouse, through which a very wholesome air and chearing light on the same 21st day of *April* in the eighth year abovesaid and for all the time abovesaid entered and were brought in, and used and were accustomed to enter and be brought in, to the great profit and advantage of the occupiers of the said workhouse: and whereas the said *John* on the 21st day of *April* in the eighth year abovesaid and always afterwards until this time hath been possessed, and as yet is possessed of a certain parcel of land with the appurtenances situate, lying and being in the parish of *Whatley* aforesaid in the county aforesaid lying contiguous to the workhouse aforesaid; and being so possessed thereof, he the said *John* contriving and fraudulently intending very much to aggrieve and oppress the said *Timothy*, and wholly to deprive him the said *Timothy* of the air and light which used and were accustomed to enter and be brought in through the window aforesaid into the said shop, and to stop up the workhouse aforesaid in horrid darkness, and wholly to deprive the said *Timothy* of the use and profit of the said workhouse, on the 21st day of *April* in the eighth year abovesaid at *Whatley* aforesaid in the county aforesaid newly erected and built a certain wall upon the said parcel of land of him the said *John* so near to the said workhouse that by the same erection of the wall aforesaid the said window on the said 21st day of *April* and always afterwards until the day of exhibiting this bill, to wit, the 23d day of *October* in the ninth year of the reign of our said lord the now king was very much stopped up and darkened, whereby the said *Timothy* hath totally lost and been deprived of the whole profit and easement of the said window,

Declaration in case for a nusance.

Possession alledged of a workhouse wherein was a window time out of mind.

That defendant is possessed of a parcel of land contiguous to the workhouse,

And built a wall there which stopped the light and air from entering into the said workhouse through the window,

whereby plaintiff lost the profit of his said workhouse.

window, and the comfort and wholesomeness of the air and light which used to enter and be brought in and upon the same window as before is set forth, and the whole use and profit of the said workhouse from the said 21st day of *April* in the eighth year abovesaid until the said 23d day of *October* in the ninth year abovesaid; whereupon the said *Timothy* saith that he is injured, and hath sustained damage to the value of forty pounds, and thereupon he brings suit, *&c.*

Imparlance.

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the said *John Long* had leave to imparl to the said bill and then to answer, *&c.* before our lord the king at *Westminster* comes as well the said *Timothy* by his attorney aforesaid as the said *John* by *James Long* his attorney; and the said *John* defends the force and injury when, *&c.* and saith that the said *Timothy* ought not to have or maintain his said action thereupon against him, because he saith that the aforesaid *Timothy* heretofore, to wit, in the term of *Easter* in the eighth year of the reign of our lord the now king in the court of him the said lord the king before the king himself here, to wit, at *Westminster* in the county of *Middlesex* impleaded the same *John Long* in a certain plea of trespass upon the case, declaring against him, that whereas he the said *Timothy* on the tenth day of *October* in the seventh year of the reign of our lord the now king, and always afterwards until that time had been and then was possessed of a certain ancient workhouse situate and being in the parish of *Whatley* in the county aforesaid, and that in that workhouse on the same tenth day of *October* in the seventh year abovesaid, and from time whereof the memory of man was not then to the contrary, there was a certain ancient window in the west part of the said workhouse, and that through the same window a very wholesome air and chearing light on the same tenth day of *October* in the seventh year abovesaid and for all the time abovesaid entered and were brought in and used and were accustomed to enter and be brought in, to the great profit and advantage of the occupiers of the said workhouse: and that the said *John* on the said tenth day of *October* in the seventh year abovesaid and always afterwards until that time had been possessed and then was possessed of a certain parcel of land with the appurtenances situate, lying and being in the parish of *Whatley* aforesaid in the county aforesaid, lying contiguous to the workhouse aforesaid; and being so possessed thereof, he the said *John* contriving and fraudulently intending very much to aggrieve and oppress the said *Timothy*, and wholly to deprive him the said *Timothy* of the air and light which used and were accustomed

Plea in bar that plaintiff hath recovered in another action for the very same nusance.

accuſtomed to enter and be brought in through the window aforeſaid into the ſaid workhouſe, and to ſtop up the workhouſe aforeſaid in horrid darkneſs, and wholly to deprive the ſaid *Timothy* of the uſe and profit of the ſaid workhouſe, on the ſaid tenth day of *October* in the ſeventh year aboveſaid at *Whatley* aforeſaid in the county aforeſaid newly erected and built a certain wall upon the ſaid parcel of land of him the ſaid *John* ſo near to the ſaid workhouſe that by the ſame erection of the wall aforeſaid the ſaid window on the ſaid tenth day of *October* and always afterwards until the 20th day of *April* in the 8th year of the reign of our lord the now king was very much ſtopped up and darkened, whereby the ſaid *Timothy* had totally loſt and been deprived of the whole profit and eaſement of the ſaid window, and the comfort and wholeſomeneſs of the air and light which uſed to enter and be brought in and upon the ſame window, and the whole uſe and profit of the ſaid workhouſe, from the ſaid tenth day of *October* in the ſeventh year aboveſaid until the ſaid 20th day of *April* in the 8th year aboveſaid, whereupon the ſaid *Timothy* then ſaid that he was injured, and had ſuſtained damage to the value of forty pounds, and thereupon he then brought ſuit, &c. And in ſuch manner it was thereupon proceeded in the ſame court here, to wit, at *Weſtminſter* aforeſaid, (after that he the ſaid *John* had there pleaded thereunto that he was not guilty thereof, and by a certain jury of the country had been found guilty thereof) that afterwards, to wit, in the term of Saint *Michael* then next following it was conſidered by the ſame court here that the ſaid *Timothy* ſhould recover againſt the ſaid *John* fourteen pounds for his damages which he had ſuſtained, as well by occaſion of the premiſſes in the ſame record mentioned, as for his coſts and charges by him laid out about his ſuit in that behalf, as by the record thereof in the ſame court here, to wit, at *Weſtminſter* aforeſaid remaining more fully appears. And the ſaid *John* further ſaith, that the aforeſaid workhouſe, window, erection and building of the wall aforeſaid in the ſaid recited record mentioned, and the aforeſaid workhouſe, window, erection and building of the wall aforeſaid in the bill of him the ſaid *Timothy* againſt him the ſaid *John Long* now exhibited above mentioned and expreſſed, are the ſame workhouſe, window, erection and building of the wall, and not others nor different; and that the aforeſaid *Timothy* named plaintiff in the ſaid recited record, and the ſaid *Timothy* the above named plaintiff in the bill aforeſaid are one and the ſame perſon, and not another nor different; and that the aforeſaid *John* named defendant in the ſaid recited record, and the aforeſaid *John* the above named defendant in the bill aforeſaid are one and the

Judgment in the former action.

Averment of the identity of the nuſance, &c.

the same person and not another nor different; and this he is ready to verify: whereupon he prays judgment if the aforesaid *Timothy* ought to have or maintain his said action against him, &c.

And the said *Timothy* saith that he by any thing by the said *John* above in pleading alledged ought not to be barred from having his said action thereupon against him the said *John*, because he saith that the plea aforesaid by the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar him the said *Timothy* from having his action thereupon against the said *John*; to which said plea he the said *Timothy* hath no necessity, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify; wherefore for want of a sufficient answer in this behalf, the said *Timothy* prays judgment and his damages by occasion of the premisses aforesaid to be adjudged to him, &c.

Demurrer.

And the aforesaid *John* saith that the said plea of him the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to bar the said *Timothy* from having his said action thereupon against him the said *John*; which said plea, and the matter therein contained, he the said *John* is ready to verify and prove, as the court, &c. And because the said *Timothy* doth not answer to that plea, nor hath hitherto in any manner denied it, he the said *John* as before prays judgment, and that the said *Timothy* may be barred from having his said action against him the said *John*, &c. but because the said court of the said lord the now king here are not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king at *Westminster* until *Wednesday* next after eight days of Saint *Martin* to hear their judgment thereupon, for that the court of the said lord the king now here is not yet thereupon, &c. At which day before the lord the king at *Westminster* come the said parties by their attornies aforesaid, whereupon all and singular the premisses being seen, and by the court of the lord the now king more fully understood, and mature deliberation being thereupon had, it seems to the court of the lord the king here that the said plea by the said *John* in manner and form aforesaid above pleaded, and the matter therein contained, are good and sufficient in law to bar him the said *Timothy* from having his said action against the said *John*, therefore it is considered that the said *Timothy* take nothing by his said bill, but that he for his false complaint be thereupon in mercy, &c. And the said

Joinder in demurrer.

Curia advisare vult.

Judgment for the defendant.

Mercy.

said *John* may thereupon go without day, &c. And it is further considered that the said *John* do recover against the said *Timothy* six pounds and ten shillings for his costs and charges sustained in and about his defence in this behalf adjudged by the court of the said lord the king now here to him the said *John* by his assent according to the form of the statute in such case made and provided, and that the said *John* have execution thereof, &c.

Entered of Trinity *Term in the 9th Year of King* William *the Third.* B. R. Roll 724.

Savill *against* Roberts. 1 Ld. Raym. 374.

Writ of error.

THE lord the king hath sent to his beloved and faithful *George Treby*, knt. his chief justice of the bench his writ close in these words, (to wit) *William* the third by the grace of God of *England*, *Scotland*, *France*, and *Ireland* king, defender of the faith, &c. To his beloved and faithful *George Treby*, knt. his chief justice of the bench greeting: forasmuch as in the record and process, and also in the giving of judgment of the plaint which was in our court before you and your companions, our justices of the bench aforesaid, by our writ between *James Roberts* and *William Savill* late of *Mexbrough* in the county of *York* esq; of a certain trespass upon the case done by the said *William* to him the said *James*, as it is said, manifest error hath intervened, to the great damage of him the said *William*, as by his complaint we are informed: we willing that the error (if any hath been) be in due manner corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if judgment be given thereupon, then that you send to us distinctly and plainly under your seal the record and process aforesaid, with all things touching the same, and this writ, so that we may have them from the day of *Easter* in fifteen days wheresoever we shall then be found in *England*, that inspecting the record and process aforesaid we may cause further to be done thereupon for the correcting that error, that which of right and according to the law and custom of our kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 16th day of *February* in the 9th year of our reign.

Hungerford.

The

The Answer of George Treby, *knt. Chief Justice within named.*

The return thereof.

The record and process of the plaint whereof mention is within made, with all things touching the same, I send before the lord the king wheresoever &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

George Treby.

Pleas inrolled at Westminster *before* George Treby *Knt. and his Companions Justices of our Lord the King of the Bench of the term of the Holy* Trinity *in the 8th Year of the Reign of our Lord* William *the third by the Grace of God of* England, Scotland, France, *and* Ireland, *King, Defender of the Faith*, &c. Roll 1737.

Declaration for maliciously and falsely procuring a man to be indicted for a riot.

Yorkshire, (to wit) *William Savill* late of *Mexbrough* in the county aforesaid esq; was attached to answer to *James Roberts* of a plea of trespass upon the case, &c. And whereupon the said *James* by *Robert Darwent* his attorney complains that the aforesaid *William Savill* contriving and wickedly and maliciously intending unjustly to aggrieve him the said *James*, and to weary, oppress and damnify him very much with various labours and expences, by pretence and colour of justice, and process of law, without a reasonable cause, and of his malice aforethought, at *Barnsley* in the county aforesaid, at the general quarter-session of the peace of the lord the king holden by adjournment there for the west riding in the county aforesaid on the 15th day of *October* in the 7th year of the reign of the lord the now king, before *George Cooke* bart. *Michael Wentworth*, *William Lowther* knights, *Robert Monkton*, *Godfrey Boswile*, *Richard Nettleton*, *John Bradshawe*, *Nonus Parker* esquires, and other justices of the said lord the king assigned to keep the peace in the west riding in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the west riding of the county aforesaid, &c. him the said *James Roberts* and (certain persons) *Richard Offerton* gent. *William Shirtcliffe*, *Thomas Middleton*, *Samuel Roberts*, *Ellen Roberts* widow, *Thomas Roberts*, *Richard Holden*, *Thomas Sheepshanke*, *Anthony Henley*, *Jonathan Crosse*, *George Sheepshanke*, *Anthony Roberts* *Benjamin Nicholson* and ——— his wife, *George Littlewood*, *Joseph Dell* and *Jonathan White*, by the names of *Richard Offerton* late of *Shirburgh* in the county aforesaid gent. *William Shirtcliffe*

Shirtcliffe late of the same labourer, *Thomas Middleton* late of *Mexbrough* in the county aforesaid labourer, *Samuel Roberts* late of *Beneby* in the county aforesaid labourer, the aforesaid *James Roberts* late of the same labourer, *Ellen Roberts* late of the same widow, *Thomas Roberts* late of the same labourer, *Jonathan Crosse* late of *Shirburgh* in the county aforesaid labourer, *George Sheepshanke* late of *Beneby* aforesaid labourer, *Anthony Roberts* late of the same labourer, *Benjamin Nicholson* late of the same labourer, and ——— his wife, *George Littlewood* late of *Shirburgh* aforesaid labourer, *Joseph Dell* late of *Beneby* aforesaid labourer, and *Jonathan White* late of the same labourer, for that they on the second day of *October* in the 7th year of the reign of the lord *William* the third by the grace of God now king of *England*, &c. with force and arms at *Beneby* aforesaid in the west riding of the county aforesaid riotously, routously, unlawfully and unjustly did assemble themselves and meet together, and did then and there riotously and routously obstruct [stop up] with certain posts, pails and rails, a certain way belonging to the aforesaid *William Savill* for the carrying of the tithes of corn and hay of him the said *William Savill* from the village of *Beneby* aforesaid to the village of *Mexbrough* aforesaid, so that he the said *William Savill* could not enjoy the same way as before, and did other wrongs to him the said *William Savill*, to the great damage of him the said *William*, and against the peace of the said lord the now king, his crown and dignity, and also against the form of the statute, &c. did falsely and maliciously cause and procure to be indicted, and that indictment against him the said *James Roberts* did falsely and maliciously prosecute and cause to be prosecuted, until he the said *James Roberts* afterwards, to wit, at the general quarter-session of the peace of the said lord the king holden in and for the west riding of the county aforesaid at *Pontefract*, on the 21st day of *April* in the 8th year of the reign of our lord *William* the third by the grace of God now king of *England*, &c. before *Henry* viscount *Downe*, *Lionell Pilkington* bart. and others their fellows justices of the said lord the king assigned to keep the peace in the west riding in the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the west riding of the county aforesaid, was acquitted thereof in due manner according to the law and custom of this kingdom of *England*, (*and then the plaintiff lays it upon another count for procuring him to be indicted by another indictment for a riot committed in the same manner the third of* October, &c.) by pretext of which said premisses he the said *James Roberts* not only in his good name, fame, credit and

and esteem which he before enjoyed is very greatly hurt and very much hindered in doing divers honest and lawful businesses, but also he the said *James* hath been obliged and compelled to undergo grievous and hard labours, and to expend and lay out divers sums of money for his acquittal aforesaid, and for his discharge in this behalf, to the damage of him the said *James Roberts* of 20 *l.* and thereupon he brings suit, *&c.*

And the aforesaid *William Savill* by *William Aislabye* his attorney comes and defends the force and injury when, *&c.* and saith that he is in no wise guilty of the premisses aforesaid above laid to his charge, as the aforesaid *James* above complains against him; and of this he puts himself upon the country, and the aforesaid *James* likewise; therefore the sheriff is commanded that he cause to come here from the day of the Holy *Trinity* in three weeks twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* because as well, *&c.* At which day the jury between the parties of the plea aforesaid was thereupon respited between them here until this day, to wit, from the day of Saint *Michael* in three weeks then next following, unless the justices of the lord the king assigned to take the assises in the county aforesaid by form of the statute, *&c.* should before come on *Saturday* the 25th day of *July* next past at the castle of *York* in the county aforesaid, *&c.* And now here at this day cometh the aforesaid *James* by his attorney aforesaid, and the aforesaid justices of assize before whom, *&c.* have sent here their record in these words: Afterwards on the day and at the place within contained, before *Edward Ward*, knt. chief baron of the exchequer of the lord the king, and *John Turton*, knt. one of the justices of the said lord the king assigned to hold pleas before the king himself, justices of the said king assigned to take the assises in the county of *York* by form of the statute, *&c.* came the within named *James Roberts* by his attorney within contained, and the within written *William Savill*, although solemnly called, came not, but made default: therefore let the jury whereof mention is within made be taken against him by default; and the jurors of that jury being called, some of them, to wit, *Samuel Midgeley*, *William Metcalfe*, *Ralph Marsden*, *Abraham Haigh*, *Robert Taylor*, *Richard Burton*, *Christopher Shaw*, *John Telborne* and *John Billing* came and are sworn upon that jury: and because the rest of the jurors of the same jury did not appear, therefore others of the bystanders, chosen by the sheriff of the county aforesaid for this purpose at the request of the aforesaid *James Roberts* and by the command of the justices aforesaid are newly appointed, whose

Plea, not guilty.

Venire awarded.

Postea.

Henry in 300*l.* of lawful money of *England* for money by him the said *Henry*, at the special instance and request of her the said *Elizabeth*, and for the said *Elizabeth* (whilst she was sole) before that time paid and laid out, and for money by her the said *Elizabeth* (whilst she was sole) before that time borrowed and received of the same *Henry*; and being so indebted, she the said *Elizabeth* (whilst she was sole) the same day and year last mentioned at *Borough-green* aforesaid in the county aforesaid in consideration thereof assumed upon herself, and to the said *Henry* then and there faithfully promised that she the said *Elizabeth* the said 300*l.* to him the said *Henry* would well and faithfully pay and content: nevertheless the aforesaid *Elizabeth* whilst she was sole, and the said *Adlard* and *Elizabeth* after the marriage between them celebrated, not at all regarding the promise and undertaking of her the said *Elizabeth* aforesaid last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Henry* in this behalf, the said 300*l.* or any part thereof (altho' often requested) have not nor hath either of them paid to him the said *Henry*, but to pay the same to him, or in any manner to satisfy him for the same, they have wholly refused and yet do refuse, whereupon the said *Henry* saith that he is injured, and hath sustained damage to the value of 300*l.* and thereupon he brings suit, &c.

Breach.

Imparlance.

And now here at this day, to wit, *Wednesday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *Adlard* and *Elizabeth* had leave to imparl to the said bill and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Henry* by his attorney aforesaid as the aforesaid *Adlard* and *Elizabeth* by *Richard Edwards* their attorney; and the said *Adlard* and *Elizabeth* defend the force and injury when, &c. and say that the said *Elizabeth* did not take upon herself in manner and form as the aforesaid *Henry* above complains against them; and of this they put themselves upon the country, and the said *Henry* likewise: therefore let a jury come thereupon before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid there, &c. Afterwards the process being thereupon continued between the said parties of the plea aforesaid by the jury being thereupon respited between them before the lord the king at *Westminster* until *Monday* next after three weeks of Saint *Michael* from thence next following, unless the justices of the lord the king assigned to take the assises in the county aforesaid

Non assumpsit pleaded.

aforesaid on *Thursday* the 11th day of *August* at the castle of *Cambridge* in the county aforesaid by form of the statute, &c. should before come for want of jurors, &c. At which day before the lord the king at *Westminster* cometh the said *Henry* by his attorney aforesaid, and the aforesaid justices before whom, &c. have sent here their record had before them in these words, to wit, Afterwards on the day and at the place within contained, before *Edward Ward* knt. chief baron of the exchequer of our lord the king, and *Thomas Knight* esq; for this time associated to the said *Edward Ward*, and *Thomas Rokeby* knt. one of the justices of the said lord the king assigned to hold pleas before the king himself, justices of him the said lord the king assigned to take the assises in the county of *Cambridge* by form of the statute, &c. the presence of the said *Thomas Rokeby* not being expected, by virtue of the writ of the said lord the king of *Si non omnes* came the within named *Henry Harrison* by his attorney within contained, and the within written *Adlard Cage* and *Elizabeth* his wife although solemnly required did not come, but made default; therefore let the jury whereof mention is within made be taken against them by default; upon which the jurors of that jury being sworn likewise came, who being chosen, tried and sworn to speak the truth concerning the matter within contained, say upon their oath that the aforesaid *Elizabeth* assumed upon herself in manner and form as the aforesaid *Henry* within complains against the said *Adlard* and *Elizabeth*; and they assess the damages of him the said *Henry* by occasion of the not performing of the promises and undertakings within specified, besides his costs and charges by him laid out about his suit in this behalf, to 400 *l.* and for those costs and charges to 40 *s.* Therefore it is considered that the aforesaid *Thomas Harrison* do recover against the aforesaid *Adlard* and *Elizabeth* his wife his damages aforesaid assessed by the jury in form aforesaid, and also 16 *l.* for his costs and charges aforesaid to him the said *Henry* by the court of the said lord the king now here with his assent adjudged of increase, which damages in the whole in themselves amount to 418 *l.* and the aforesaid *Adlard* and *Elizabeth* in mercy, &c. Afterwards, to wit, on *Saturday* the 26th day of *November* in the tenth year of the reign of our lord *William* the third now king of *England*, &c. Transcripts of the record and process aforesaid between the parties aforesaid of the plea aforesaid, with all things touching them, by pretext of a certain writ of the said lord the king of correcting errors, by the aforesaid *Adlard* and *Elizabeth* prosecuted in the premisses before the justices of the said

Postea

Verdict for the plaintiff.

Judgment.

Error brought in the exchequer chamber.

said lord the king of the common bench, and the barons of the exchequer of the said lord the king of the degree of the coif in the chamber of the exchequer aforesaid, according to the form of the statute set forth in the parliament of the lady *Elizabeth* late queen of *England*, &c. holden at *Westminster* the 23d day of *November* in the 27th year of her reign, were transmitted from the said court of the said lord the king here before the king himself: and the aforesaid *Adlard* and *Elizabeth* appearing in the same court of the exchequer chamber, assigned certain matters for error in the record and process aforesaid to be had for the reversing and annulling the judgment aforesaid; to which the aforesaid *Henry* likewise appearing in the same court of the exchequer chamber aforesaid hath pleaded that neither in the record and process aforesaid, nor in the giving of the judgment aforesaid, was there any thing erroneous. And afterwards, to wit, on *Tuesday* the 27th day of *June* in the 11th year of the reign of our lord *William* the third now king of *England*, &c. as well the record and process aferesaid, and the judgment given upon the same, as the aforesaid causes by the said *Adlard* and *Elizabeth* assigned and alledged for error being seen, and by the court of the exchequer chamber aforesaid diligently examined and more fully understood, it seemed to the said court of the exchequer chamber aforesaid that the said record is in no wise vitious or defective, and that the said record is in no wise erroneous, therefore it was then and there considered by the same court of the exchequer chamber aforesaid, that the judgment aforesaid should in all things be affirmed and stand in all its force and effect, the said causes and matters by the said *Adlard* and *Elizabeth* assigned and alledged for error in any wise notwithstanding: and it was then and there further considered by the said court that the said *Henry* do recover against the said *Adlard* and *Elizabeth* 10*l.* and 10*s.* adjudged by the court there to the said *Henry* with his assent, according to the form of the statute thereof made and provided, for his damages, costs and charges which he hath sustained by occasion of the delay of execution of the judgment aforesaid by pretext of the prosecution of the said writ of error; and thereupon the record aforesaid, and also the process aforesaid of the justices of the common bench aforesaid, and the said barons of the exchequer aforesaid had before them in the premisses were then sent back by the same justices and barons, according to the form of the statute, &c. before the lord the king wheresoever, &c. and do now remain in the court of the lord the king here before the king himself, &c. Afterwards, to wit, on *Wednesday* next

Errors assigned.

Judgment affirmed.

Costs for delay of execution,

and the record sent back to the king's bench.

next after three weeks of the Holy *Trinity* in the 13th year of the reign of our lord *William* the third now king of *England*, &c. before the said lord the king at *Westminster* cometh the aforesaid *Henry Harrison* by his said attorney, and acknowledgeth himself to be satisfied by the aforesaid *Adlard* and *Elizabeth* of the debt, damages, costs and charges aforesaid, therefore they the said *Adlard* and *Elizabeth* are thereupon acquitted of the debt, damages, costs and charges aforesaid, &c.

Satisfaction acknowledged.

Hilary *Term in the 9th Year of King* William *the Third*. Roll 1175.

Chaloner *against* Davis. 1 Ld. Raym. 400.

Buckinghamshire, (to wit) THOMAS *Davis* late of the parish of *Stokelyne* in the county of *Oxford* yeoman, otherwise called *Thomas Davis* of *Baynton* in the parish of *Stokelyne* in the county of *Oxford* yeoman, was summoned to answer *William Chaloner* gent. of a plea that he render to him 100 pounds which he oweth to him and unjustly detains, &c. And whereupon the aforesaid *William* by *William Vaux* his attorney saith, That whereas by a certain writing of articles of agreement made the first day of *May* in the 8th year of the reign of the lord the now king, between the said *William Chaloner* by the name of *William Chaloner* of *Steeple-Claydon* in the county of *Buckingham* gent. of the one part, and the aforesaid *Thomas* by the name of *Thomas Davis* of *Baynton* in the parish of *Stokelyne* in the county of *Oxford* yeoman, of the other part, at *Aylesbury* in the county of *Buckingham* aforesaid (the counterpart whereof sealed with the seal of the aforesaid *Thomas* he the said *William Chaloner* brings here into court, the date whereof is the same day and year) it was concluded and agreed in manner and form following, that is to say, First of all it was agreed by and between the parties aforesaid, and the aforesaid *William Chaloner* for himself, his heirs, executors, administrators and assigns, by the writing of the articles aforesaid covenanted and granted to and with the aforesaid *Thomas Davis*, his heirs and assigns, that the said *William Chaloner* and all persons claiming under him on or before the 17th day of *November* next following the date of the writing of the articles aforesaid, should make,

Debt for 100l. penalty upon articles of agreement.

That plaintiff should make defendant a good conveyance of certain lands.

feal and deliver to the aforefaid *Thomas Davis*, at the cofts and charges of the faid *Thomas Davis*, a good and fufficient title, affurance and conveyance in the law of all that meffuage with the out-houfes, edifices, yards, orchards, gardens and appurtenances thereunto belonging, and of one clofe of arable land adjoining to the aforefaid meffuage, and of all thofe two yard-lands of arable, meadow and pafture ground with the appurtenances; all which faid premiffes are fituate and being in the town, parifh and fields of *Steeple-Claydon* aforefaid, and then were in the poffeffion of the faid *William Chaloner*, and before that time were in the poffeffion of *Thomas Snow* deceafed. Alfo fecondly; it was further agreed, and the faid *Thomas Davis* for himfelf, his executors and adminiftrators covenanted and agreed to and with the faid *William Chaloner*, his executors, adminiftrators and affigns by the writing of the articles aforefaid, that he the faid *Thomas Davis* or his affigns at the time of the execution and fealing of fuch conveyance, and in confideration thereof would well and faithfully pay or caufe to be paid to the aforefaid *William Chaloner*, his executors, adminiftrators or affigns, the juft and full fum of five hundred and three pounds of lawful money of *England*, at the houfe of Sir *Francis Child* fituate at *Temple Bar*, *London*. Thirdly, it was agreed that the faid *Thomas Davis* fhould enter upon and enjoy the aforefaid clofe adjoining to the faid houfe at the fame time when the faid fum of 305*l.* fhould be paid to the aforefaid *William Chaloner* or his affigns, and alfo all commons for cows and horfes belonging to the faid two yard-lands. Fourthly, it was agreed that the aforefaid *William Chaloner* and his affigns fhould enjoy all the lands and herbage and furze in the field called *Windmill-fields* in the parifh of *Steeple-Claydon* aforefaid belonging to the aforefaid two yard-lands, until the crops which fhould be there growing in the year of our Lord 1697 fhould be reaped, cut and carried off, and that he the faid *William Chaloner* fhould have free liberty to plough and fow the fame. Fifthly, it was agreed that the faid *Thomas Davis* and his affigns fhould enter upon the aforefaid meffuage, out-houfes, edifices and yards thereunto belonging, and a little piece of land about the fpring adjoining to the backfide of the faid meffuage, and fhould inclofe the fame with pale immediately after the date of the writing of the articles aforefaid, he the faid *William Chaloner* and his affigns having liberty to go through the yard to fetch off his crops of corn then growing in the faid clofe. Sixthly, it was agreed that the faid *Thomas Davis* fhould enter upon all the fheep-commons upon the 29th day of *September* next following, and alfo

That the defendant at the time of the execution of fuch conveyance and in confideration thereof fhould pay plaintiff 503*l.*

At the houfe of Sir *F. C.*

that he ſhould enter upon and enjoy all the lands belonging to the ſaid two yard-lands being in the woodfield, as ſoon as the crop then growing ſhould be cut and carried off. Seventhly, it was agreed that the ſaid *William Chaloner*, or any other perſon with his privity, ſhould not cut any wood then growing upon any part of the premiſſes at any time after that time. Laſtly, it was agreed that the ſaid *Thomas Davis* or his aſſigns yearly for ever afterwards ſhould pay to the ſaid *William Chaloner* or his aſſigns the ſum of two ſhillings on the 29th day of *September*, and ſhould appear at all the courts afterwards to be holden for the manor of *Steeple-Claydon* aforeſaid; and for the true performance of all and ſingular the premiſſes aforeſaid, the aforeſaid *William Chaloner* and *Thomas Davis* ſeverally bound themſelves to each other in the penal ſum of 100 *l.* of lawful money of *England* by the ſame writing, as by the writing of the articles aforeſaid appeareth, he the ſaid *William Chaloner* in fact ſaith that he the ſaid *William Chaloner* from the time of the making of the writing of the articles aforeſaid always hitherto hath been ready well and faithfully to obſerve, perform and keep all and ſingular the covenants, grants, articles and agreements in the ſaid writing of the articles aforeſaid above ſpecified on his part to be obſerved, performed and kept, according to the form and effect of the writing of the articles aforeſaid; and that the aforeſaid *Thomas* from the time of the making of the writing of the articles aforeſaid hitherto hath not obſerved, performed or kept any of the covenants, grants, articles or agreements whatſoever in the writing of the articles aforeſaid above ſpecified on his part to be obſerved, performed and kept, according to the form and effect of the writing of thoſe articles; and particularly he the ſaid *William Chaloner* in fact ſaith, that he the ſaid *William Chaloner* and one *Robert Markham* of *Yardley* in the county of *Hertford* eſq; after the making of the ſaid writing of the articles aforeſaid, and before the ſaid 17th day of *November* in the ſame writing of the articles mentioned, to wit, on the 16th day of the ſame month of *November* (the ſame *Robert Markham* being poſſeſſed of and in the tenements and premiſſes aforeſaid for the reſidue of two terms of years, the reverſion thereof belonging to the ſaid *William Chaloner* and his heirs) at *Steeple-Claydon* aforeſaid made and ſealed their certain indenture of bargain and ſale of the tenements and premiſſes aforeſaid in the writing of the articles aforeſaid mentioned, and then and there delivered that indenture as their act and deed to the uſe of him the ſaid *Thomas*, by which ſaid indenture the ſaid *William Chaloner* and *Robert*, for and in conſideration of the

Both bind themſelves in 100l. for the true performance, &c.

Averment that the plaintiff and one *R. M.* (who was poſſeſſed of the reſidue of two terms of years) ſealed indentures of leaſe and releaſe of the premiſſes, and delivered to the uſe of the defendant.

ſeveral ſums of 5 *s.* of lawful money of *England* to them the ſaid *William Chaloner* and *Robert* in hand reſpectively paid, bargained and ſold to the ſaid *Thomas* the tenements and premiſſes aforeſaid, by the names of all that meſſuage with the out-houſes, edifices, yards, orchards, gardens and appurtenances thereunto belonging, and of one cloſe of arable land adjoining to the aforeſaid meſſuage, and of a little piece of land about the ſpring adjoining to the backſide of the ſaid meſſuage, and alſo of all thoſe two yard lands of arable land, meadow and paſture with the appurtenances, ſituate and being in the town, pariſh and fields of *Steeple-Claydon* aforeſaid, and which then were in the poſſeſſion of the ſaid *William Chaloner* and *Thomas Davis*, or of one of them, and which before that time were in the poſſeſſion of *Thomas Snow* deceaſed, and the reverſion and reverſions, remainder and remainders of all and ſingular the premiſſes, and of all the rents, ſervices and other profits of the premiſſes, and of every part and parcel thereof; to have and to hold the premiſſes aforeſaid with the appurtenances to the ſaid *Thomas Davis* and his aſſigns from the day next before the day of the date of the ſaid indenture for and during the term of one whole year from thence next following and fully to be compleat and ended; yielding and paying therefore the rent of one pepper corn at the feaſt of Saint *Michael* the archangel only, if the ſame ſhould be demanded, to the intent that by virtue of the indenture aforeſaid, and the ſtatute for tranſferring of uſes into poſſeſſion, the ſaid *Thomas Davis* might be in the actual poſſeſſion of the premiſſes, and able to accept of a grant and releaſe of the reverſion and inheritance thereof to himſelf the ſaid *Thomas Davis* and his heirs; and that they the ſaid *William Chaloner* and *Robert* afterwards, to wit, upon the ſaid 17th day of *November* in the wri of the articles aforeſaid (ſo as before is ſet forth) mentioned, at *Steeple-Claydon* aforeſaid made and ſealed a certain other indenture of releaſe and confirmation of the tenements and premiſſes aforeſaid, and then and there delivered that indenture as their act and deed to the uſe of him the ſaid *Thomas* and his heirs, by which ſaid indenture the ſaid *William Chaloner* for and in conſideration of the ſum of 503 *l.* of lawful money of *England* to him the ſaid *William* in hand mentioned to be paid, and the ſaid *Robert* in conſideration of the ſum of 5 *s.* of like lawful money to him the ſaid *Robert* in hand likewiſe mentioned to be paid, releaſed and confirmed to the ſaid *Thomas Davis* (being in the actual poſſeſſion thereof) the premiſſes aforeſaid, by the ſaid names of all that meſſuage with the out-houſes, edifices, yards, orchards, gardens nd appurtenances thereunto belonging,

The releaſe.

and

and of one close of arable land adjoining to the aforesaid messuage, and of a little piece of land about the spring adjoining to the backside of the said messuage, and also of all those two yard-lands of arable land, meadow and pasture with the appurtenances, situate and being in the town, parish and fields of *Steeple Claydon* aforesaid, and which then were in the possession of the said *William Chaloner* and *Thomas Davis*, or of one of them, and which before that time were in the possession of *Thomas Snow* deceased, and the reversion and reversions, remainder and remainders of all and singular the premisses, and of all the rents and services and other profits of the premisses, and of every part and parcel thereof, and also all the estate, right, title, interest, claim and demand whatsoever which they the said *William Chaloner* and *Robert* had or hath, or in any manner could or ought to have of, in or to the premisses, or any part thereof; to have and to hold the premisses aforesaid with the appurtenances to the said *Thomas*, his heirs and assigns, to the only use of the said *Thomas Davis*, his heirs and assigns for ever; and that the said *Thomas* agreed for himself and his assigns by the same indenture yearly afterwards for ever to render and pay to the said *William Chaloner* or his assigns the sum of 2 *s.* upon the 29th day of *September*, and to appear at all the courts afterwards to be holden for the manor of *Steeple-Claydon* aforesaid, and the aforesaid *William Chaloner* then and there was ready and offered, and always afterwards hath been and yet is ready at the costs of him the said *Thomas* to make and procure to be made any other conveyance of the tenements and premisses aforesaid, according to the form of the articles aforesaid. And the said *William Chaloner* in fact further saith that the said *Thomas* afterwards, to wit, on the 17th day of the said month of *November* at *Steeple-Claydon* aforesaid had notice of the premisses, and so having notice thereof, the said *Thomas* then and there absolutely refused himself to agree to that indenture, or to accept the same of them the said *William Chaloner* and *Robert* as the deed of them the said *William Chaloner* and *Robert* to the aforesaid *Thomas*, and yet doth refuse; and the said *Thomas* or his assigns have not paid or caused to be paid to the said *William Chaloner* the said sum of 503 *l.* according to the form and effect of the writing of the articles aforesaid, but to pay the same to the said *William Chaloner* according to the form and effect of the articles aforesaid, the said *Thomas* hath denied, and yet doth deny, by which an action hath accrued to him the said *William Chaloner* to require and have of the aforesaid *Thomas* the said 100 *l.* Nevertheless the said *Thomas* although often requested hath not yet rendered to the said *William Chaloner* the said

100 *l.*

100 *l.* but to render the same to him hath denied, and yet doth deny, whereupon he saith that he is injured, and hath sustained damage to the value of 20 *l.* and thereupon he brings suit, &c.

Demurrer, and joinder in demurrer.

Entered of Michaelmas *Term in the 9th Year of King* William *the Third.* B. R. Roll 178.

Doctor Groenvelt *against* Doctor Burwell and others, Censors of the College of Physicians. 1 Ld. Raym. 454.

Trespass, assault and imprisonment against the censors, &c. of the college of physicians.

London, (to wit) BE it remembered that heretofore, to wit, in the term of *Easter* last past before the lord the king at *Westminster* came *John Groenvelt* doctor in physick by *Thomas Prime* his attorney, and brought here in the court of the said lord the king then there his certain bill against *Thomas Burwell, Richard Torless, William Dawes* and *Thomas Gill* doctors in physick, and *John Cole,* in the custody of the marshal, &c. of a plea of trespass, assault and imprisonment; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe,* which said bill follows in these words; (to wit) *John Groenvelt* doctor in physick complains of *Thomas Burwell, Richard Torless, William Dawes* and *Thomas Gill* doctors in physick, and *John Cole,* being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that they the said *Thomas Burwell, Richard Torless, William Dawes, Thomas Gill* and *John Cole,* on the 15th day of *April* in the 9th year of the reign of the lord *William* the third now king of *England,* &c. with force and arms, that is to say with swords, staves and knives made an assault upon him the said *John Groenvelt* at *London* aforesaid, to wit, in the parish of the blessed *Mary of the Arches* in the ward of *Cheape,* and him the said *John Groenvelt* then and there did beat, wound and ill treat, so that of his life it was greatly despaired, and did then and there imprison him the said *John Groenvelt,* and him so in prison there detained for a long space of time, to wit, for the space of seven days from thence next following without any reasonable cause, against the will of him the said *John Groenvelt,* and contrary to the law and custom of this kingdom of *England,* and other wrongs to him then and there did, against the peace of the said lord the now king, and to the damage of him the said *John Groenvelt* of 2000 *l.* and thereupon he brings suit, &c.

And

And now here at this day, to wit, *Saturday* next after three weeks of Saint *Michael* in this same term, until which day the aforesaid *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* had leave to imparl to the bill aforesaid, and then to answer, &c. before the lord the king at *Westminster* come as well the aforesaid *John Groenvelt* by his attorney aforesaid, as the aforesaid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* by *Richard Swift* their attorney, and they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* defend the force and injury when, &c. and as to the coming with force and arms, or whatsoever that is against the peace of the said lord the now king, and also the beating and wounding aforesaid above supposed to be done, say that they are not guilty thereof, and of this they put themselves upon the country, and the aforesaid *John Groenvelt* thereof likewise, &c. And as to the residue of the trespass and imprisonment aforesaid above supposed to be done, they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* say, that the aforesaid *John Groenvelt* ought not to have or maintain his said action thereof against them, because they say that long ago, and long before the aforesaid time when the trespass and imprisonment aforesaid is supposed to be done, the lord *Henry* the eighth late king of *England*, by his letters patent sealed under his great seal of *England* bearing date at *Westminster* the 23d day of *September* in the tenth year of his reign, which they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* bring here into court, reciting that whereas it was thought the blessing of his royal office, with all due consideration to consult the happiness of the people of his realm, and first of all, if it could be, how he might in due season put a stop to the enterprises of wicked persons, he chiefly held it necessary to check the boldness of wicked men also who professed physick more for the sake of avarice than in confidence of any good conscience, from whence very many inconveniences did arise to the rude and credulous common people; therefore partly imitating the example of the well-governed cities in *Italy* and in many other nations, partly yielding to the prayers of the grave men and doctors *John Chambre*, *Thomas Linacre*, *Ferdinand de Victoria* his physicians, and of *Nicholas Halswell*, *John Francisco* and *Robert Yaxley* physicians, and especially of the most reverend father in Christ and lord *Thomas*, titled of the holy church beyond *Tiber* cardinal priest of the most holy *Roman* church, archbishop of *York*, and the most noble chancellor of his realm of *England*, he willed and commanded to be instituted a perpetual college of doctors and grave men who should publickly practise

Imparlance.

Plea, not guilty as to the force and arms, beating and wounding and issue thereupon joined.

As to the residue they plead in bar.

Setting out the letters patent of *Henry* the 8th to the college of physicians.

practise physick in his city of *London* and suburbs and within seven miles every way from that city, to whom, as he hoped it would be for his own honour, as well as for the care of the public utility, to deter malicious persons (whose ignorance and rashness he remembered), as well by their example and gravity, as to punish them by his laws lately set forth, and by constitutions to be ordained by the same college, which things that they might be more easily rightly accomplished, he granted to the aforesaid doctors *John Chambre*, *Thomas Linacre*, *Ferdinand de Victoria* his physicians, *Nicholas Halsewell*, *John Francis*, and *Robert Yaxley* physicians, that they and all the men of the same faculty of and in the city aforesaid should be in thing and name one body and perpetual commonalty or perpetual college, and that the same commonalty or college might every year for ever chuse and make of that commonalty some provident man and skilful in the faculty of physick for the president of the same college or commonalty, to supervise, review and govern for that year the college or commonalty aforesaid, and all men of the same faculty, and the businesses of the same; and that they the said president and college or commonalty should have a perpetual succession, and a common seal for the businesses of the said commonalty and president to be kept for ever, and that they and their successors for ever should be persons able and capable to purchase and possess in fee and perpetuity lands and tenements, rents and other possessions whatsoever: he also granted for himself and his heirs to them and their successors, that they and their successors might purchase to themselves and their successors as well in the said city as without it, any lands and tenements whatsoever not exceeding the yearly value of twelve pounds, the statute of alienations in mortmain notwithstanding; and that they by the name of the president of the college or commonalty of the faculty of physick might plead and be impleaded before whatsoever judges in all courts and actions whatsoever, and that the aforesaid president and college or commonalty and their successors, lawful and honest assemblies of themselves, and statutes and ordinances for the wholesome government, overlooking and correction of the college or commonalty aforesaid, and of all men practising the same faculty in the said city or within seven miles in circuit of the same city, according to the exigence of necessity, as often as and when need should be, might lawfully and without peril make without the hindrance of the said late king, his heirs or successors, his justices, escheators, sheriffs and others his bailiffs or ministers, or of his heirs and successors whatsoever. He also granted to them the

the ſaid preſident and college or commonalty and their ſucceſſors, that no body in the ſaid city or ſeven miles in the circuit thereof ſhould exerciſe the ſaid faculty, unleſs he ſhould be admitted to this by the ſaid preſident and commonalty or their ſucceſſors for the time being, by the letters of the ſame preſident and college ſealed with their common ſeal, under the penalty of 100 ſhillings for every month wherein (not being admitted) he ſhould exerciſe the ſame faculty, half thereof to be applied to the ſaid lord the king, and half to the ſaid preſident and college. Beſides he willed and granted for himſelf and his ſucceſſors (as much as in himſelf was) that by the preſident and college of the aforeſaid commonalty for the time being and their ſucceſſors for ever, four perſons ſhould be choſen by them every year, who ſhould have the overſeeing and ſearching, correction and government of all and ſingular the phyſicians of the ſaid city practiſing the faculty of phyſick in the ſame city, and of other foreign phyſicians whomſoever practiſing and uſing in any manner the ſaid faculty of phyſick within the ſame city, ſuburbs thereof, or within ſeven miles in circuit of the ſame city, and the puniſhment of them for their offences in not well exerciſing, doing and uſing the ſame; and alſo the overſeeing and ſearching of all medicines, and the reception (or recipes) of them by the ſaid phyſicians or any of them to the liege people of the ſaid late king for curing, and their infirmities to be given, put and uſed, as often and when need ſhould be for the profit and utility of the ſaid liege people of the ſaid late king; ſo that the puniſhment of ſuch phyſicians uſing the ſaid faculty of phyſick ſo offending in the premiſſes ſhould be executed by fines, amercements, impriſonment of their bodies, and by other ways reaſonable and fitting. He alſo willed and granted for himſelf, his heirs and ſucceſſors, (as much as in him was) that neither the preſident nor any other of the ſaid college of phyſicians, nor their ſucceſſors, nor any of them exerciſing that faculty in any manner for the future within the city aforeſaid and the ſuburbs thereof, or elſewhere ſhould be ſummoned or put, nor ſhould any of them be ſummoned or put in any aſſiſes, juries, inqueſts, inquiſitions, attaints, and other recognitions within the ſaid city or ſuburbs thereof in time to come, to be taken before the mayor and ſheriffs, or coroners of his ſaid city for the time being, or to be ſummoned by any their officer or miniſter, or their officers or miniſters, although the ſame juries, inquiſitions or recognitions ſhould be ſummoned upon the writ or writs of right of the ſaid late king or his heirs, but that the ſaid maſters or governors and commonalty of the faculty aforeſaid and their ſucceſſors,

ſucceſſors, and every of them exerciſing the ſaid faculty, ſhould be thereof acquitted and abſolutely diſcharged for ever againſt the ſaid late king, his heirs and ſucceſſors, and againſt the mayor and ſheriffs of his city aforeſaid for the time being, and all their officers and miniſters whatſoever, as by the ſame letters patent amongſt other things more fully appears. And

That they were incorporated.

they the ſaid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* further ſay, that by virtue of the letters patent aforeſaid, the aforeſaid *John Chambre*, *Thomas Linacre*, *Ferdinand de Victoria*, *Nicholas Halſewell*, *John Francis* and *Richard Yaxley* phyſicians, and all men of the ſame faculty in the city aforeſaid were one body and perpetual commonalty, or perpetual college; and afterwards by a certain act ſet forth in the

The ſtatute of *Hen.* 8. confirming the letters patent.

parliament of the ſaid late king *Henry* the eighth, holden at *Weſtminſter* in the county of *Middleſex* the laſt day of *July* in the 15th year of the ſame late king by prorogation, (amongſt other things) it was enacted by the authority of the ſame parliament, that foraſmuch that the making of the ſaid corporation was meritorious and very good for the commonwealth of this realm of *England*; and beſides it was expedient and neceſſary to provide that no perſon of the ſaid politic body and commonalty aforeſaid ſhould be ſuffered to exerciſe and practiſe phyſick but only ſuch perſons as ſhould be profound, ſad and diſcreet, groundedly learned, and deeply ſtudied in phyſick: in conſideration whereof, and for the farther authorizing of the ſaid letters patent, and alſo for enlarging of farther articles for the ſaid commonwealth, to be had and made by the ſaid late king, with the conſent of the lords ſpiritual and temporal and commons in the ſame parliament aſſembled, it is enacted amongſt other things, that the ſaid corporation of the ſaid commonalty and fellowſhip of the faculty of phyſick aforeſaid, and all and every grant, article and other things contained and ſpecified in the ſaid letters patents, ſhould be approved, granted, ratified and confirmed in the ſame parliament, and clearly authorized and admitted by the ſame parliament good, lawful and available to the aforeſaid body corporate and their ſucceſſors for ever, in as ample and large manner as may be taken, thought and conſtrued by the ſame letters patents; and it is further enacted, ordained and eſtabliſhed by the ſaid act, that the aforeſaid ſix perſons in the aforeſaid letters patents named as principals, and firſt named of the ſaid commonalty and fellowſhip, ſhould chooſe to them two others of the ſame commonalty, who from thenceforth ſhould be called and named elects, and that the ſame elects ſhould yearly chooſe one of them to be preſident of the ſaid commonalty, and as often as any of the rooms and

and places of the said elects should fortune to be void by death or otherwise, then the survivors of the said elects within 30 or 40 days next after the death of them, or any of them, should choose, name and admit one or more, as need should require, of the most learned and expert men of and in the said faculty in *London* to supply the said room and number of 8 persons, so that he or they that should be so chosen be first by the said survivors strictly examined after a form devised by the said elects, and also by the same survivors approved, as by the same act amongst other things more fully appears. And they the aforesaid *Thomas*, *Richard*, *William*, *Thomas*, and *John* further say, that afterwards and long before the aforesaid time when, &c. by a certain other act set forth in the parliament of lady *Mary* late queen of *England*, holden at *Westminster* on the 24th day of *October* in the first year of her reign, it was enacted by the authority of the same parliament, that the said statute or act of parliament before recited in every article and clause therein contained should from thenceforth stand and continue still in full force, strength and effect, any statute, law, custom, or any other thing, made, had or used to the contrary, in any wise notwithstanding: and for the better reformation of divers enormities happening to the commonwealth by the evil using and undue administration of physick, and for the enlarging of further articles for the better execution of the things contained in the aforesaid grant, it was further enacted by the same act made in the aforesaid parliament of the said late queen, That whensoever the president of the college or commonalty of the faculty of physick of *London* for the time being, or such as the said president and college should yearly, according to the tenor and meaning of the said act, authorize to search, examine, correct and punish all offenders and transgressors in the said faculty within the same city and precinct in the said act expressed, should send or commit such offender or offenders for his or their offences or disobedience, contrary to any article or clause contained in the said grant or act, to any ward, gaol or prison within the same city or precinct aforesaid, (the *Tower* of *London* except) That then from time to time the warden, gaoler or keeper, wardens, gaolers or keepers of the wards, gaols and prisons within the city or precinct aforesaid (except before excepted) should receive into his, or their prisons, all and every such person and persons so offending as should be sent or committed to him or them as is aforesaid, and there should safely keep the person or persons so committed into any of their prisons, at the proper costs and charges of the said person or persons so committed, without

The statute of *Mary* confirming the same,

and enlarging their power.

without bail or mainprize, until ſuch time as ſuch offender or offenders, or diſobedients, ſhould be diſcharged of the ſaid impriſonment by the ſaid preſident, and ſuch perſons as by the ſaid college ſhould be authorized, upon pain that every ſuch warden, gaoler and keeper doing the contrary, ſhould loſe and forfeit the double of ſuch fines and amercements as ſuch offender and offenders, or diſobedients, ſhould be aſſeſſed to pay, by ſuch as the ſaid preſident and college ſhould authorize as aforeſaid, ſo that the ſame fine and amercement ſhould not be at any time above the ſum of 20 *l.* the moiety thereof to be employed to the uſe of the ſaid late queen, her heirs and ſucceſſors, the other moiety unto the ſaid preſident and college; all which forfeitures ſhould be recovered by action of debt, bill, plaint or information in any of the ſaid late queen's, her heirs and ſucceſſors courts of record againſt any ſuch warden, gaoler or keeper ſo offending, in which ſuit no eſſoign, wager of law nor protection ſhould be allowed, nor be admitted by the defendant. And it was further enacted by the authority of the ſaid parliament, that all juſtices, mayors, ſheriffs, bailiffs, conſtables, and other miniſters and officers within the city and precinct aforeſaid, upon requeſt of them to be made, ſhould help, aid and aſſiſt the preſident of the ſaid college and all perſons by them from time to time authorized for the due execution of the ſaid acts, upon pain for not giving help to run in contempt of the ſaid late queen, her heirs and ſucceſſors, as by the ſame act amongſt other things more fully appears. And they the ſaid *Thomas*, *Richard*, *William*, *Thomas*, and *John Cole* further ſay, that the aforeſaid *John Groenvelt* for a long ſpace of time, to wit, for five years laſt paſt and more, within the city of *London* and the circuit of ſeven miles of the ſame, to wit, at *London* aforeſaid in the pariſh and ward aforeſaid hath exerciſed and uſed, and as yet doth exerciſe and uſe the faculty of phyſick, and the ſame *John* ſo exerciſing and uſing that faculty, and pretending himſelf to be very ſkilful in the ſame, before the aforeſaid time when, *&c.* to wit, on the firſt day of *April* in the 8th year of the reign of our lord *William* the third now king of *England*, *&c.* there undertook and aſſumed upon himſelf to cure and heal one *Suſan Withall*, then the wife of one *William Withall*, of a certain infirmity or diſeaſe a little time after the time of her travail, (and delivery) and happening by occaſion thereof as it was ſuppoſed, whereof ſhe laboured and was detained, for forty ſhillings to him the ſaid *John Groenvelt* in hand paid, and other forty ſhillings to him afterwards to be paid: nevertheleſs the ſaid *John Groenvelt*, his cure, then and there about the ſaid *Suſannah*, ſo indiſcreetly, evilly, inartificially and

and unskilfully applied, and such unwholesome, wicked, bad and pernicious pills and noxious drugs to her then and there gave and administered, that the said *Susannah* not only was not healed, but became very much more and greatly infirm, and was greatly and dangerously hurt in her body, and from thenceforth hitherto hath laboured thereof with extreme grief, and languished in the most sad and miserable condition, and as yet so labours thereof, and is languid and incurable, so that her life was despaired of, and as yet is despaired of, by occasion of the bad, unskilful and pernicious practice of him the said *John Groenvelt* in this behalf committed and perpetrated upon the body of her the said *Susannah*. And they the said *Thomas*, *Richard*, *William*, *Thomas*, and *John Cole* further say, that by virtue of the letters patent aforesaid, and by force of the statutes aforesaid, one *Thomas Millington* knt. doctor in physick, a prudent man and skilful in the faculty of physick, and then one of the commonalty of the college of physicians in *London* aforesaid, and then being one of the eight elects of the college or commonalty aforesaid, before the aforesaid time when, &c. to wit, on the 30th day of *September* in the 8th year of the reign of the lord the now king at the college of physicians, situate in the parish of *Christchurch* in the ward of *Farringdon Within London*, was in due manner chosen and preferred to the office of president of the college or commonalty aforesaid, and being in the office of president of the college or commonalty aforesaid, they the same president and college of the aforesaid commonalty on the same 30th day of *September* in the 8th year abovesaid at the college aforesaid in the parish of *Christchurch* aforesaid did choose them the said *Thomas Burwell*, *Richard*, *William* and *Thomas Gill*, prudent men and skilful in the faculty of physick, and then being doctors of the college aforesaid to be the four censors or governors of the commonalty aforesaid to oversee and search, correct and govern all and singular the physicians of the said city using the faculty of physick in the same city, and other foreign physicians whomsoever frequenting to, and using the faculty of physick in any manner within the same city and the suburbs thereof, or within seven miles in circuit of the same city, and to punish them for their faules, in not well exercising, doing and using the same, and also to oversee and search their medicines, and their recipes by the said physicians or any of them given, applied or used for curing the infirmities of the liege people, and such like of the said lord the king as often and when need should be, and for the profit and utility of the same liege people, and to punish those physicians delinquents using the said faculty of physick in the premisses by fines,

amerc-

amercements and the imprisonment of their bodies, and by other ways reasonable and fitting, according to the form and effects of the letters patents aforesaid, and of the statutes aforesaid: which said *Thomas*, *Richard*, *William* and *Thomas* then and there took upon themselves that office, and became censors and governors of the college or commonalty aforesaid in due manner, and so, until the aforesaid time when, *&c.* and afterwards continued and existed; and they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* further say, that afterwards and before the said time when, *&c.* to wit, on the fifth day of *February* in the 8th year of the reign of the lord the now king at the college of physicians in the parish of *Christchurch* in the ward of *Farringdon Within* aforesaid, a certain complaint on the behalf of the aforesaid *William Withall* and *Susannah* his wife was made and exhibited to them the said *Thomas*, *Richard*, *William* and *Thomas* then being censors or governors of the college aforesaid as before is set forth, against the aforesaid *John Groenvelt* for the aforesaid undue, unskilful, bad and pernicious practice upon the body of the aforesaid *Susannah* by him the said *John Groenvelt* so as before is set forth, done and committed; and thereupon the aforesaid *John Groenvelt* afterwards, to wit, on the same 5th day of *February* in the 8th year abovesaid at *London* aforesaid in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* aforesaid was in due manner summoned by them the said *Thomas*, *Richard*, *William* and *Thomas*, then censors or governors of the college aforesaid, to appear before them the said censors or governors of the college aforesaid at the college aforesaid on the 9th day of *April* then next following, to be examined and to answer of and concerning the premisses; and that before the aforesaid time when, *&c.* to wit, on the same 9th day of *April* in the 9th year of the reign of the said lord the now king, before the aforesaid *Thomas*, *Richard*, *William* and *Thomas*, then being censors or governors of the college aforesaid as before is set forth, at the college aforesaid came the aforesaid *John Groenvelt* in his proper person, and the aforesaid censors or governors thereupon then and there did proceed to examine and inquire into the matter of complaint aforesaid, and upon the attestation of divers credible persons then present affirming the truth of the complaint aforesaid, in the presence of him the said *John Groenvelt*, and upon hearing him the said *John Groenvelt* whatsoever he could say in defence or excuse of himself, and upon consideration of the whole matter aforesaid they the said *Thomas*, *Richard*, *William* and *Thomas*, being censors or governors of the college aforesaid so as before is set forth, did then and there by virtue of the letters patent and of the statutes

aforesaid

aforesaid adjudge the aforesaid *John Groenvelt* to be guilty of the undue, unskilful and bad practice aforesaid, and therefore they did then and there impose a fine of 20*l.* of lawful money of *England* upon him the said *John Groenvelt*; and they did further adjudge that he the said *John Groenvelt*, for his offence aforesaid, should be committed to the gaol of the said lord the king of *Newgate* in *London*, and should have and undergo imprisonment in the same gaol at his own proper costs and charges without bail or mainprize for the space of twelve weeks then next following, unless he should be sooner discharged by the president of the college aferesaid, and such persons as by the college aforesaid should be thereunto lawfully authorized, or otherwise by due course of law; which said adjudication of those censors or governors was put, and recorded in writing, and now remains in the power of them the said censors or governors not annulled, but is in full force; and the aforesaid *Thomas*, *Richard*, *William*, *Thomas*, and *John Cole* further say, that they the said *Thomas*, *Richard*, *William* and *Thomas*, with intention that execution of the judgment or adjudication aforesaid should be done by virtue of the letters patents and of the statute aforesaid then and there by their certain precept or warrant in writing reciting the complaint and judgment or adjudication aforesaid at large under their hands and seals did command him the said *John Cole* (being their minister to execute such their precept) that he should take the body of him the said *John Groenvelt*, and deliver him to the keeper of the gaol of *Newgate* aforesaid, there to remain without bail or mainprize for the space of the aforesaid twelve weeks, unless he should be sooner delivered by the president of the college aforesaid, and such persons as by the college aforesaid should be authorized, or otherwise by due course of law; by virtue of which warrant the aforesaid *John Cole* at the said time when, &c. at *London* aforesaid in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* aforesaid took the aforesaid *John Groenvelt* and then delivered him together with the warrant aforesaid under the hands and seals of the same four censors, specifying the premisses to the keeper of the gaol aforesaid, there to be detained in form aforesaid, as it was well and lawful for them to do; and the same *John Groenvelt* thereupon was detained in prison there for the time aforesaid in the declaration aforesaid mentioned, which said taking, imprisonment and detention in the prison aforesaid of the aforesaid *John Groenvelt* in form aforesaid and for the cause aforesaid done, are the same residue of the trespass and imprisonment aforesaid whereof the aforesaid *John Groenvelt* himself now complains; and this they

they are ready to verify: whereupon they pray judgment if the aforesaid *John Groenvelt* ought to have or maintain his action aforesaid thereof against them, &c.

B. Shower,
Law. Agar,
Jo. Keene.

Replication. And the aforesaid *John Groenvelt* saith that he by any thing by the aforesaid *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* above in pleading alledged ought not to be barred from having his action aforesaid as to the residue of the trespass, imprisonment and detention in prison aforesaid against them, because he saith that well and true it is that he the said *John Groenvelt* for a long space of time, to wit, for five years next before the exhibiting the bill of him the said *John Groenvelt* aforesaid, was and as yet is a doctor of physick, and did exercise and use the art or faculty of physick for the whole time aforesaid within the city of *London* aforesaid and the circuit of seven miles of the same, as they the aforesaid *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* have above in pleading alledged, but the same *John Groenvelt* protesting that the lord *Henry* late king of *England* did not grant by any such letters patents as they the said *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* have above in pleading alledged; and protesting also that there is not had any such record of the act of parliament of the said late king *Henry* the eighth as they the said *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* have above in pleading likewise alledged; and protesting also that he the said *John Greenvelt* his cure about the said *Susannah Withall* in the said plea of them the said *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* named, did not indiscreetly, evilly, inartificially and unskilfully apply, nor any unwholesome, wicked, bad and pernicious pills or noxious drugs to her grave, or administered, as they the said *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* by their plea aforesaid have above alledged; and protesting also that no complaint on the behalf of the aforesaid *William Withall* and *Susannah* his wife was made or exhibited to them the said *Thomas*, *Richard*, *William* and *Thomas Gill* against him the said *John Groenvelt* for the undue, unskilful, bad and pernicious practice upon the body of the aforesaid *Susannah* by him the said *John Groenvelt* supposed to be done and committed, as they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* above in pleading have

have alledged; and that no such judgment or adjudication of the aforesaid *Thomas*, *Richard*, *William* and *Thomas* was given, as they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* by their plea aforesaid have above alledged; for plea the said *John Groenvelt* by replying saith, That they the said *Thomas Burwell*, *Richard Torless*, *William Dawes*, *Thomas Gill* and *John Cole* of their own wrong made an assault upon him the said *John Groenvelt*, and did ill treat, imprison him, and for the space of seven days did detain him in prison in manner and form as the aforesaid *John Groenvelt* above hath declared against them, and not by virtue of the warrant to him the said *John Cole* by the plea aforesaid above supposed to be made; and this he prays may be inquired of by the country.

Nath. Wright,
Jo. Girdler,
Ed. Northey.

Demurrer.

And the aforesaid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* say, that the aforesaid plea of the said *John Groenvelt* in manner and form aforesaid above pleaded in reply, and the matter therein contained, are not sufficient in law for him the said *John Groenvelt* to have his said action thereof to be maintained against the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole*, to which said plea or replication of the said *John Groenvelt* in manner and form aforesaid pleaded, they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* have no necessity, neither are they bound by the law of the land in any manner to answer; whereupon for want of a sufficient replication of the aforesaid *John Groenvelt* in this behalf, they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* as before pray judgment, and that the aforesaid *John Groenvelt* may be barred from having his action aforesaid thereof against them the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole*, &c. And for causes of this demurrer in law upon the replication aforesaid they the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* shew to the court here and say, that where the aforesaid *John Groenvelt* in his said replication says (amongst other things) that well and true it is that he for a long space of time, to wit, for the aforesaid five years was and as yet is a doctor of physick, &c. as they the aforesaid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* have above in pleading alledged, there sufficiently and manifestly appears to the court here *that* which is not alledged in the aforesaid plea of them the said *Thomas*, *Richard*, *William*, *Thomas* and *John Cole*, but they have only alledged thereupon that the aforesaid *John Groenvelt*

 hath

hath exercifed and ufed for that time, and as yet doth exercife and ufe the art or faculty of phyfick, pretending himfelf to be very fkilful in the fame, which allegation differs much from that which the aforefaid *John Groenvelt* by his fame replication doth fuppofe them to have made; and that the proteftations of the aforefaid *John Groenvelt* are vain, void, and altogether fuperfluous, and the firft of them is an imperfect fentence and deficient in fenfe, and the fecond of the fame proteftations is negative pregnant, ambiguous and uncertain; and alfo efpecially that the aforefaid *John Groenvelt* traverfeth the virtue of the warrant aforefaid, which is not traverfable, it being validity and matter of law, where he ought to traverfe the making or the exiftence of the fame warrant, or the delivery thereof to the faid *John Cole*, *&c.* Further the aforefaid *John Groenvelt* traverfeth or denies that they the faid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole*, that is to fay all of them, by virtue of the warrant aforefaid did imprifon him the faid *John Groenvelt*, and tenders this for an iffue, where they have above alledged that the faid *John Cole only* by virtue of that warrant took the aforefaid *John Groenvelt* and delivered him into prifon, and that they the faid *Thomas*, *Richard*, *William* and *Thomas* made that warrant to him: and alfo the faid traverfe wants form for want of thefe words, to wit, (*without this*) or (*without fuch caufe*) which in fuch traverfes are ufed and ought to be put.

Joinder in demurrer.

And the aforefaid *John Groenvelt* faith that the plea aforefaid by him the faid *John Groenvelt* in manner and form aforefaid above pleaded in reply, and the matter therein contained, are good and fufficient in law to have the aforefaid action of him the faid *John Groenvelt* to be maintained againft the faid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole*; which faid plea, and the matter therein contained, he the faid *John Groenvelt* is ready to verify and prove as the court, *&c.* And becaufe the aforefaid *Thomas*, *Richard*, *William*, *Thomas* and *John Cole* do not anfwer to that replication, nor do hitherto in any wife deny it, he the faid *John Groenvelt* prays judgment and his damages by occafion of the trefpafs, affault and imprifonment aforefaid to be adjudged to him. But becaufe the court of the lord the king now here is not yet advifed of giving their judgment of and concerning the premiffes, day is given to the parties aforefaid, *&c.*

Entered of Hilary *Term in the 9th Year of King* William *the Third.* Roll 437.

Iveſon *againſt* Moore and Others. 1 Ld. Raym. 486.

Caſe for ſtopping a highway whereby the tomers could come to intiff's colies, and his ls were ſpoiled.

Yorkſhire, (to wit.) BE it remembered that heretofore, to wit, in the term of Saint *Michael* laſt paſt before the lord the king at *Weſtminſter* came *Henry Iveſon* by *William Calvert* his attorney, and brought here in the court of the ſaid lord the king then there his certain bill againſt *John Moore* eſq; and *Ruth* his wife, *Samuel Wright*, *Jeremiah Colley*, *Henry Smith* and *Peter Clakey*, in the cuſtody of the marſhal, &c. of a plea of treſpaſs upon the caſe; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid bill followeth in theſe words, to wit, *Yorkſhire*, to wit, *Henry Iveſon* complains of *John Moore* eſq; and *Ruth* his wife, *Samuel Wright*, *Jeremiah Colley*, *Henry Smith* and *Peter Clakey*, being in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king before the king himſelf, for that, to wit, that whereas the ſaid *Henry Iveſon* on the 14th day of *May* in the ninth year of the reign of our lord *William* the third now king of *England*, &c. and long before and always afterwards until this time was poſſeſſed and as yet is poſſeſſed for a certain term of years, then and yet to come and unexpired, of and in a certain colliery and mine of coals, being under the ſoil and land, and in the bowels of a certain cloſe or parcel of land ſituate and lying in the pariſh of *Whitkirke* otherwiſe *Whitchurch* in the county aforeſaid, called *Whitkirke* otherwiſe *Whitchurch-fields*, and near adjacent to the king's common highway in the pariſh aforeſaid, leading on the north part of the town of *Wetherby* in the county aforeſaid in, by and over a certain moor there called *Winmore*, and from thence in, by and through a certain lane there called *Aulſhaw-Lane*, and from thence in, by and through the village of *Whitkirke* otherwiſe *Whitchurch* aforeſaid, and ſo back again, and alſo of and in a certain other colliery and mine of coals being under the ſoil and land and in the bowels of a certain cloſe of moor or parcel of land in the pariſh aforeſaid called *Halton Moor*, ſituate and lying and near adjacent to the king's common highway leading on the north part from the village of *Whitkirke* aforeſaid, in, by and over the ſaid moor called *Winmore*, and from thence in, by and through the lane aforeſaid called *Aulſhaw-Lane*, and from

 thence

thence in, by and through the village of *Halton* aforesaid in the county aforesaid, and so back again, in, by and through which said lane called *Aulshaw-Lane* the coals gotten and dug out of the said mines were used, and intended to be carried and conveyed from the closes aforesaid to the neighbouring and circumjacent places. And also whereas on the same 14th day of *May* the aforesaid *Henry Iveson* had a great quantity, to wit, two hundred cart-loads of coals dug out of the mines aforesaid in the several closes aforesaid ready to be exposed to sale, the aforesaid *John Ruth*, *Samuel*, *Jeremiah*, *Henry Smith* and *Peter* not being ignorant of the premisses, but contriving and fraudulently and maliciously intending to hinder, deceive and deprive him the said *Henry* of the use and benefit of his said collieries, and the buyers of the coals dug out of the said collieries, to draw away and seduce from the said collieries, and to appropriate and procure them to the colliery of the said *John Moore*, near adjacent in the parish aforesaid afterwards, to wit, on the said 14th day of *May* in the ninth year of the reign of the said lord the now king abovesaid did put and place four cart-loads of great stones and one root of a great ash in the said way at the parish aforesaid, and continued and permitted the stones and root of the ash aforesaid there to remain for the space of one month, by which said stones and root of the ash aforesaid the way aforesaid in, by and through the lane aforesaid was so much stopped up and obstructed that the carts and carriages for the carrying and conveying of the coals gotten and dug out of the collieries and mines aforesaid could not pass in, by and through the said way by the lane aforesaid, by which he the said *Henry Iveson* wholly lost the benefit, profit and advantage of his collieries aforesaid for the whole time aforesaid, and the coals gotten out of the collieries aforesaid for want of buyers so hindered and obstructed by the cause aforesaid became greatly damaged and of less price, to the damage of the said *Henry* of fifty pounds.

Plea, Not guilty.

Pleas before our Lord the King and our Lady the Queen at Westminster *of the Term of* Easter *in the second Year of the Reign of our Lord* William *and our Lady* Mary *King and Queen of* England, &c. Roll 53.

Payne *against* Partridge. 1 Ld. Raym. 493, 494.

Cambridgeshire, (to wit) BE it remembered that heretofore, to wit, in the term of Saint *Michael* last past before our lord the king and our lady the queen at *Westminster* came *Isaac Payne* by *Humphrey Ambler* his attorney, and brought into the court of our said lord the king and lady the queen then there his certain bill against *Edward Partridge* esq; and *William Boulter* in the custody of the marshal, *&c.* of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Cambridgeshire*, to wit, *Isaac Payne* complains of *Edward Partridge* esq; and *William Boulter*, being in the custody of the marshal of the *Marshalsea* of our lord the king and lady the queen, for that, (to wit) that whereas the town of *Littleport* within the isle of *Ely* in the county aforesaid is, and from all time whereof the memory of man is not to the contrary hath been an antient town; and whereas within the said town of *Littleport* aforesaid there is, and for all the same time there hath been an antient river called *Wilney River*, and upon the same river and across over the same for the whole time abovesaid there hath been an antient passage at the north-east side of the same town of *Littleport*, near the end of a lane called *Ferry-Lane*, leading from the town of *Littleport* aforesaid to the said river, for the passing and carrying over of the subjects of this realm of *England* willing to pass over and beyond that river, to wit, from a certain place called the *Ferry-Lane* on the north-east part thereof to a certain place called *Adventurous Bank*, on the north-east part of the same river across that river either forward or backward at their will, for the passing and carrying over of their horses, mares and geldings, which said passing and carrying over for the whole time abovesaid until of late, to wit, the first day of *May* in the 15th year of the reign of the lord *Charles* the second late king of *England*, *&c.* have been held and peformed in a certain

Declaration in case against the owners of a ferry boat for not keeping it in repair.

Prescription in a ferry and toll for passage.

a certain ferry-boat kept by the owners and occupiers of the ſaid paſſage, and the owners, occupiers and keepers of the ſaid paſſage and ferry-boat for the time being, for the better keeping and maintaining the ſame for the whole time aforeſaid, have taken and been accuſtomed to take of the ſaid ſubjects of this realm of *England* ſo to be paſſed and carried over and beyond the ſaid river, to wit, from the ſaid place called the *Ferry-Lane* to the ſaid place called *Adventurous Bank* acroſs the ſaid river (other than of the inhabitants of the ſame town of *Littleport* reſiant in the antient meſſuages or antient cottages there) certain reaſonable rates or toll or cuſtom, that is to ſay, one halfpenny for every horſe and man riding thereon, and for every led-horſe, mare or gelding one farthing, and for every horſe, mare or gelding otherwiſe loaded one penny, for ſuch paſſing and carrying them over as before is ſet forth, to be had every time of their paſſing over beyond the river aforeſaid at the paſſage aforeſaid either backwards or forwards. And whereas alſo within the ſame town of *Littleport* there is had, and from the whole time aforeſaid whereof the memory of man is not to the contrary there hath been had ſuch an antient cuſtom, that is to ſay, that the inhabitants of that town reſiant in the antient meſſuages or antient cottages there, have had and might have, and for the whole time aforeſaid have been accuſtomed to have liberty of paſſing over the ſaid river at the paſſage aforeſaid there for themſelves, their horſes, mares and geldings in the ferry-boat aforeſaid, ſo as before is ſet forth, to be carried over either forwards or backwards at their liberty, without any payment whatſoever ſo to be had for ſuch their liberty over; and alſo whereas he the ſaid *Iſaac* on the firſt day of *May* in the ſecond year of the reign of our lord *James* the ſecond late king of *England*, &c. and long before and from thence afterwards until this time hath been and as yet is one of the inhabitants of the ſaid town of *Littleport*, in a certain antient meſſuage there then and as yet reſiant, and for that cauſe and reaſon he the ſaid *Iſaac* by virtue of the ſaid cuſtom hath had and ought to have the liberty of paſſing over the ſaid river at the paſſage aforeſaid in the ſaid ferry-boat for himſelf, his horſes, mares and geldings in form aforeſaid, without any payment whatſoever to be made for the ſame: nevertheleſs the ſaid *Edward* and *William* not being ignorant of the premiſſes, but contriving and maliciouſly intending him the ſaid *Iſaac* unjuſtly to aggrieve, and greatly to damnify and to deprive him of the liberty of his aforeſaid paſſing over the ſaid river at the paſſage aforeſaid to be had in the ſaid ferry-boat as before is ſet forth, and alſo to cauſe him the ſaid *Iſaac* wholly to loſe the

Exception of inhabitants in antient meſſuages from paying toll.

Preſcription for the exemption of the ſaid inhabitants.

That the plaintiff is an inhabitant in an antient meſſuage.

Breach in not keeping a boat.

the ſame, on the ſaid firſt day of *May* in the ſecond year aboveſaid, and from thence until the day of exhibiting the ſaid bill of him the ſaid *Iſaac* (they the ſaid *Edward* and *William* being then and before and afterwards until this time owners, occupiers and keepers of the paſſage and ferry-boat aforeſaid) had preſerved or kept no ferry-boat at the ſaid paſſage for the paſſing over of the ſubjects of this realm, and of their horſes, mares and geldings aforeſaid, willing to paſs over and beyond that river, but have for the time aforeſaid wholly omittted and neglected to do, have, preſerve or keep the ſame, and no ferry-boat there for the time aforeſaid, or any part of that time hath been, or as yet is there, although the ſaid *Edward* and *William* on the ſaid firſt day of *May* in the ſecond year aboveſaid and often afterwards at *Littleport* aforeſaid were requeſted by the ſaid *Iſaac* to have ſuch ferry-boat at the paſſage aforeſaid, and to permit him the ſaid *Iſaac* to have his ſaid liberty there, ſo that he the ſaid *Iſaac* from the ſaid firſt day of *May* in the ſecond year aboveſaid and from thence until this time hath been and as yet is hindered and wholly deprived of his liberty of paſſing over the river aforeſaid at the ſaid paſſage in form aforeſaid to be had, according to the cuſtom aforeſaid contrary to the ſaid cuſtom, to the damage of the ſaid *Iſaac* of 500*l.* and thereupon he brings ſuit, &c.

Imparlance.

And now at this day, to wit, *Wedneſday* next after fifteen days of *Eaſter* in this ſame term, until which day the ſaid *Edward* and *William* had leave to imparl to the ſaid bill and then to anſwer, &c. before our lord the king and lady the queen at *Weſtminſter* cometh as well the ſaid *Iſaac* by his attorney aforeſaid as the ſaid *Edward* and *William* by *Joſeph Sherwood* their attorney; and the ſaid *Edward* and *William* defend the force and injury when, &c. and ſay that the aforeſaid *Iſaac* ought not to have or maintain his ſaid action thereupon againſt them, becauſe proteſting that the paſſing and carrying of perſons, horſes, mares and geldings over and beyond the ſaid river have not been had or done in any ferry-boat kept for the paſſing and carrying over of perſons or cattle in the place where, and in manner and form as by the declaration aforeſaid is above ſuppoſed; and proteſting that within the ſaid town of *Littleport* there is not, nor ever hath been ſuch a cuſtom as in the declaration aforeſaid is above ſuppoſed and alledged; and proteſting alſo that the ſaid *Iſaac* is not, nor ever hath been one of the inhabitants of the ſaid town of *Littleport* reſiant in any antient meſſuage there, in manner and form as by the ſaid declaration is above ſuppoſed, for plea they the ſaid *Edward* and *William* ſay that long before the ſaid time in which, &c. to wit,

Proteſtation that the paſſage was not in a boat.

Further proteſtation that there is no ſuch cuſtom, and that plaintiff is not an inhabitant.

Plea that defendants have built a bridge and kept it in repair,

wit, on the firſt day of *May* in the 15th year of the reign of the ſaid late king *Charles* the ſecond aforeſaid, he the ſaid *Edward* at his own proper coſts and charges erected, built and placed in and upon the ſaid river and over the ſame river at the paſſage aforeſaid a certain bridge made of wood and ſtones for the uſe, eaſement, paſſing, carrying over of all and every of the perſons, horſes, mares and geldings there coming and willing to paſs over and beyond the ſaid river at the paſſage aforeſaid, which ſaid bridge ſo erected and placed there, he the ſaid *Edward* from time to time and at all times after the making thereof until this time hath there well and ſufficiently had, preſerved and maintained, repaired and kept, ſo that he the ſaid *Iſaac*, and all and every the perſons, horſes, mares and geldings there coming and willing to paſs over and beyond the ſaid river at the paſſage aforeſaid from time to time and at all times after the making and placing of the ſaid bridge there until this time might and as yet may there go, return and paſs upon the ſaid bridge over and beyond the ſaid river without any danger at the paſſage aforeſaid, more ſafely, better and more ſpeedily than in a ferry-boat; for which reaſon they the ſaid *Edward* and *William* had preſerved or kept no ferry-boat at the ſaid paſſage, but have omitted and neglected to do, have, preſerve or keep the ſame, as it was lawful for them for the cauſe aforeſaid; and this they are ready to verify: wherefore they pray judgment if the ſaid *Iſaac* ought to have or maintain his ſaid action thereof againſt them, &c.

for which reaſon they omitted to keep the boat.

Reply, that he was not permitted to paſs over any bridge.

And the ſaid *Iſaac* ſaith that he by any thing by the ſaid *Edward* and *William* above alledged ought not to be barred from having his ſaid action thereof againſt them, becauſe he the ſaid *Iſaac* ſaith that he was not permitted to have the liberty of the paſſage aforeſaid by any bridge over and beyond the river aforeſaid, according to the cuſtom in the declaration aforeſaid mentioned, contrary to the cuſtom aforeſaid; and this he is ready to verify: wherefore he prays judgment and his damages by occaſion of the premiſſes to be adjudged to him, &c.

Demurrer.

And the ſaid *Edward* and *William* ſay that the plea aforeſaid by the ſaid *Iſaac* in manner and form aforeſaid above pleaded in reply, and the matter in the ſame contained, are not ſufficient in law to have and maintain the ſaid action of him the ſaid *Iſaac* againſt them the ſaid *Edward* and *William*, to which they the ſaid *Edward* and *William* have no neceſſity, nor are bound by the law of the land to anſwer in any manner; and this they are ready to verify: wherefore for want of a ſufficient replication in this behalf, they the ſaid *Edward* and *William* as before pray judgment, and

that

that the said *Isaac* may be barred from having his said action against them the said *Edward* and *William*, &c.

And the said *Isaac* saith that the plea aforesaid by him the said *Isaac* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are good and sufficient in law to have and maintain the said action of him the said *Isaac* against them the said *Edward* and *William*; which said plea and the matter in the same contained, he the said *Isaac* is ready to verify and prove as the court, &c. And because the said *Edward* and *William* do not answer to that plea, nor hitherto in any manner deny it, he the said *Isaac*, as before prays judgment, and his damages by occasion of the premisses to be adjudged to him, &c. But because the court of the said lord the king and lady the queen now here are not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king and lady the queen at *Westminster* aforesaid until *Friday* next after the morrow of the Holy *Trinity* to hear their judgment of and upon the premisses, for that the court of the said lord the king and lady the queen now here are thereof not yet, &c. At which day before the lord the king and lady the queen at *Westminster* come the said parties by their attornies aforesaid: but because the court of our said lord the king and lady the queen are not yet advised, (in like manner the entry is continued down until the first day of the next *Trinity* term by several continuances of *curia advisare vult*) at which day before the lord the king and lady the queen at *Westminster* come the said parties by their attornies aforesaid; upon which all and singular the premisses being seen and more fully understood by the court of the said lord the king and lady the queen now here, and mature deliberation being thereupon had, it seems to the court of the said lord the king and lady the queen now here that the aforesaid plea by the said *Isaac* in manner and form aforesaid above pleaded in reply, and the matter in the same contained, are not sufficient in law to have and maintain the said action of him the said *Isaac* against the said *Edward* and *William*, therefore it is considered that the said *Isaac* take nothing by his said bill, but for his false complaint he be in mercy, &c. and that the said *Edward* and *William* go without day thereupon, &c.

Joinder in demurrer.

Continuances by *curia advisare vult.*

Judgment for the defendants.

Pleas

Pleas before the Lord the King at Westminster *of the Term of the Holy* Trinity *in the tenth Year of the Reign of our Lord* William *the Third now King of* England, &c. Roll 162.

Robins *against* Robins. 1 Ld. Raym. 503.

Declaration in case for arresting defendant and holding him to bail upon mesne process, where no bail was required by law.

Cornwal, (to wit) BE it remembered that heretofore, to wit, in the term of *Easter* last past before our lord the king at *Westminster* came *Stephen Robins* gent. by *Edward Hoblyn* his attorney, and brought into the court of the said lord the king then there his certain bill against *John Robins* gent. in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said bill followeth in these words, to wit, *Cornwal*, to wit, *Stephen Robins* gent. complains of *John Robins* gent. being in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, for that, to wit, that whereas the said *John* never had any lawful cause of action against him the said *Stephen*, so that by the law of this realm of *England* the body of him the said *Stephen* ought therefore to be taken and detained in prison until he the said *Stephen* should find sufficient bail to answer to him the said *John* in the same cause: nevertheless the said *John* well knowing the premisses, but contriving and maliciously intending him the said *Stephen* unjustly to aggrieve, oppress and damnify in this behalf, and to impair and take away his credit and reputation as much as in him laid, he the said *John* on the 28th day of *May* in the ninth year of the reign of our lord *William* the third now king of *England*, &c. at *Bodmyn* in the county aforesaid, by pretence and colour of certain mesne process in law caused the said *Stephen* to be arrested, and although he the said *Stephen* was always ready to appear upon such process at the day of the return thereof to answer to him the said *John* according to the exigency of the same process, nevertheless the said *John* on the day and year aforesaid at *Bodmyn* aforesaid maliciously procured and caused the said *Stephen* to be imprisoned, and to be there detained in prison for the space of six months, for that only, because the aforesaid *Stephen* could not find sufficient bail to answer to him the said *John* upon the process aforesaid, by which the said *Stephen*

Stephen was forced to expend great sums of money for his maintenance in prison aforesaid, and the necessary business of him the said *Stephen* for that time remained undone, and he the said *Stephen* in his manner of living was greatly injured, to the great disturbance of his mind, and to the manifest hurting of his fame and credit; whereupon the aforesaid *Stephen* saith that he is injured, and hath sustained damage to the value of thirty pounds, and thereupon he brings suit, *&c.*

And now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this same term, until which day the aforesaid *Stephen* had leave to impart to the bill aforesaid and then to answer, *&c.* before the lord the king at *Westminster* cometh as well the said *Stephen* by his attorney aforesaid as the aforesaid *John* by *Joseph Sherwood* his attorney; and the said *John* defends the force and injury when, *&c.* and saith that he is not guilty thereof; and of this he puts himself upon the country, and the said *Stephen* thereof likewise: therefore let a jury thereupon come before the lord the king at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity*, and who neither, *&c.* to recognize, *&c.* because as well, *&c.* The same day is given to the parties aforesaid there, *&c.*

Nota; *The above declaration having been adjudged to be bad as appears by the Report, here follows a declaration for the like cause of action which is a good one, and was so determined to be, in the third year of king* George *the third.*

Declaration for arresting and holding defendant to special bail in a case where no special bail was required by the course of the court.

Worcestershire, (to wit) A. *T.* spinster, complains of *W. M.* being in the custody of the marshal of the *Marshalsea* of our sovereign lord the king before the king himself, for that the said *W. M.* maliciously and injuriously contriving and intending to oppress, aggrieve and injure the said *A.* and to cause her the said *A.* to be unjustly arrested and imprisoned for a large sum of money, and not only to deprive the said *A.* of her liberty, and to hinder her from going about her lawful affairs and business, but also to cause her the said *A.* without any just or reasonable cause to expend divers large sums of money on that occasion, in the term of the Holy *Trinity* which was in the year of our Lord 1761 did falsly, unjustly and maliciously prosecute and cause to be prosecuted out of the court of our said lord the king before the king himself (the same court being then and now here, to wit, at *Westminster* in the county of *Middlesex*) a certain writ of our said lord the king called a *latitat*, directed to the then sheriff of *Worcestershire*, by which said writ

Sets out the writ of latitat.

writ the said then sheriff of *Worcestershire* was commanded that he should take the said *A.* and one *John Doe*, if they should be found in his bailiwick, and that he should keep them safely so that he might have their bodies before the said lord the king at *Westminster* on *Friday* next after the morrow of *All Souls* then next ensuing to answer to the said *W. M.* in a plea of trespass, and also to a bill of him the said *W.* against the said *A.* for twenty pounds upon promises, according to the custom of the court of our said lord the king before the king himself to be exhibited, and that the said sheriff should then have there that writ; upon which said writ the said *W. M.* afterwards, to wit, on the thirteenth day of *October* in the year aforesaid unjustly and maliciously caused to be indorsed that the said sheriff should take bail in that suit for thirteen pounds, to wit, at *Shipston upon Stower* in the said county of *Worcester*, by colour and pretext of which said writ so indorsed as aforesaid the said *W. M.* afterwards and before the return of that writ, that is to say, on the twenty-sixth day of *October* in the said year of our Lord 1761 at *Shipston upon Stower* aforesaid in the said county of *Worcester* unjustly and maliciously caused and procured the said *A.* to be arrested and imprisoned, and to be kept and detained in prison there for want of bail for the appearance of the said *A.* to that suit for a long space of time, that is to say, from thence until the third day of *December* then next ensuing, when she the said *A.* was discharged from the said imprisonment upon her finding bail in the suit aforesaid, which she the said *A.* was forced and obliged to do, whereas in truth and in fact she the said *A.* at the time of the prosecution of the said writ, and at the time of the said arrest and imprisonment of her the said *A.* aforesaid, or at either of those times was not indebted to the said *W. M.* in the said sum of thirteen pounds, nor in any sum of money for which she the said *A.* ought to have been arrested or imprisoned or held to bail as aforesaid; nor had the said *W. M.* at either of those times any cause of action or suit against the said *A.* for any sum or sums of money for which she the said *A.* ought according to the course and practice of the said court of our said lord the king before the king himself to be compelled to find or put in special bail in that suit, as by the said writ so unjustly and maliciously prosecuted as aforesaid she the said *A.* was compelled to do. And the said *A.* further saith that the said suit of the said *W. M.* is now wholly ended and determined, by reason of which premisses the said *A.* hath not only been deprived of her liberty, and hindered and obstructed in carrying on and transacting her lawful affairs and business during the

which was indorsed to take bail for 13 l.

and the defendant was thereupon arrested,

and forced to give special bail.

Averment that defendant was not indebted in any sum for which she ought to have been arrested.

Averment that the said suit is ended.

The *Gravamen*.

the time above mentioned in this behalf, but also was compelled and under a necessity to expend and lay out, and did actually lay out and expend divers large sums of money as well for her the said *A.*'s maintenance and support during her said confinement and imprisonment, as also for her the said *A.*'s enlargement and discharge therefrom, to wit, at *Shipston upon Stower* aforesaid in the county of *Worcester* aforesaid, to the damage of the said *A.* of five hundred pounds, and therefore she brings suit, *&c.*

Pledges to prosecute, { *John Doe,* and *Richard Roe.* }

Pleas before the Lord the King at Westminster *of the Term of Saint* Michael *in the* 11*th Year of the Reign of our Lord* William *the Third, now King of* England, &c. Roll 377.

The Bishop of Salisbury *against* Phillips. 1 Ld. Raym. 535.

Writ of error in *quare impedit.*

THE lord the king hath sent to his beloved and faithful *George Treby*, knt. his chief justice of the bench, his writ close in these words, to wit, *William* the third by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, *&c.* to his beloved and faithful *George Treby*, knt. his chief justice of the bench greeting: forasmuch as in the record and process, and also in the giving of judgment of the plaint which was in our court before you and your companions, our justices of the bench aforesaid, by our writ between *William Phillips* executor of the will of *William Phillips* gent. his father lately deceased, and *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, for that they the said bishop should permit him the said *William Phillips* the then plaintiff to present a fit person to the church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert* in the county of *Wilts*, which was void and did belong to his gift, as it was said manifest error hath intervened, to the great damage of them the said bishop and *John*, as by their complaint we are informed: we willing that the error (if any hath been) be in due manner corrected, and full and speedy justice be done to them the said bishop and *John* in this behalf, do command you that if judgment

judgment be given thereupon, then that you send to us distinctly and plainly under your seal the record and process aforesaid, with all things touching the same, and this writ, so that we may have them from the day of *Easter* in five weeks wheresoever we shall then be in *England*; that inspecting the record and process aforesaid we may cause further to be done thereupon for the correcting that error that which of right and according to the law and custom of our kingdom of *England* shall be meet to be done. Witness ourself at *Westminster* the 26th day of *April* in the 11th year of our reign.

Hale.

The return thereof.

The Answer of George Treby, *knt. Chief Justice within named.*

The record and process of the plaint whereof mention is within made, with all things touching the same, I send before the lord the king wheresoever &c. at the day within contained, in a certain record to this writ annexed, as I am within commanded.

George Treby.

The record of the common pleas.

Pleas inrolled at Westminster *before* George Treby *Knt. and his Companions Justices of our Lord the King of the Bench of the Term of the Holy* Trinity *in the* 10*th Year of the Reign of our Lord* William *the Third by the Grace of God of* England, Scotland, France *and* Ireland *King, Defender of the Faith,* &c. *in the Roll* 1562.

Wiltshire.

Declaration in *quare impedit* by an executor of the grantee of the next turn to present.

Wiltshire (to wit) *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, were summoned to answer to *William Phillips* gent. executor of the last will and testament of *William Phillips* gent. his father lately deceased, of a plea that they permit him the said *William Phillips* the now plaintiff to present a fit person to the church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert*, which is void and belongs to his gift, &c. And whereupon the said *William Phillips* the now plaintiff by *Dennis Russell* his attorney saith, That whereas one *Richard Organ* and one *John Organ* were seised as of fee and right of the advowson of the church aforesaid as in gross of itself, and being so seised thereof, the aforesaid *Richard Organ* and *John Organ* on the 26th day of *June* in the 13th year of the reign of the lord

James

James the first late king of *England*, &c. at *Stanton* aforesaid in the county aforesaid, by their certain indenture made between the aforesaid *Richard* by the name of *Richard Organ* of *Damborne* in the county of *Berks*, gent. of the one part, and the aforesaid *John Organ* by the name of *John Organ* of *Stanton* within the hundred of *Highworth* in the county of *Wilts* gent. of the other part, the counterpart whereof sealed with the seal of the aforesaid *John Organ* he the said *William Phillips* the now plaintiff brings here into court, the date whereof is the same day and year, concluded and agreed between themselves that they the aforesaid *Richard Organ* and *John Organ* should from thenceforth be seised in common not jointly of the advowson of the church aforesaid, that is to say, that the said *Richard Organ* should stand and be seised of and should have, hold and enjoy one mediety of the said advowson to him and his heirs, and that the said *John Organ* should stand and be seised of and should have, hold and enjoy the other mediety of the said advowson to him and his heirs; and that the said *Richard Organ* and *John Organ* and their several heirs, so often as the said church of *Stanton* should become void, should severally and respectively present by several turns alternately in manner and form following, that is to say, that the said *Richard Organ* and his heirs should present to the said church in the first turn thereof when the said church should first and next happen to be void, and that the said *John Organ* and his heirs should present to the said church when the same then next should be void the second time, and so the said *Richard Organ* and *John Organ* severally, and their several and respective heirs in their several turns alternately, as the same church at any time from thence afterwards should become void, should present or might present their clerks, according to the order and course concluded and agreed upon as before is set forth, as by the same indenture among other things more fully appears, by which they the said *Richard* and *John* were seised of the advowson aforesaid to present to the same church in form aforesaid; and being so seised thereof, the aforesaid *Richard Organ* after the making of the indenture aforesaid to begin his first turn to the same church being void, and as in his first turn at *Stanton* aforesaid presented one *John Woodbridge* his clerk, who upon the presentation of him the said *Richard Organ* was there admitted and instituted in the same in the time of peace in the time of the lord *James* the first late king of *England*, &c. And afterwards the church aforesaid became void by the death of the aforesaid *John Woodbridge* there, whereby the said *John Organ* at *Stanton* aforesaid presented

Sets forth an indenture of agreement between joint-tenants to present by turns.

Profert in curiam of the indenture.

The first presentation.

Avoidance by death.

The second presentation.

presented one *Thomas Hotchkis* his clerk to the said church being so void, as in the second turn, who upon the presentation of him the said *John Organ* was admitted and instituted in the same in the time of peace in the time of the lord *Charles* the first late king of *England*, &c. And the aforesaid *Richard Organ* and *John Organ* being so seised of the advowson aforesaid, the aforesaid *Richard Organ* afterwards at *Stanton* aforesaid died seised of such his estate thereof, by and after whose death a mediety of the advowson aforesaid descended to one *John Organ* as brother and heir of the said *Richard Organ*, by which the same *John Organ* the brother was seised of the mediety of the advowson aforesaid as of fee and right to present in form aforesaid; and being so seised thereof afterwards, to wit, on the 25th day of *August* in the 14th year of the reign of the said late king *Charles* the first, by a certain indenture made between him the said *John Organ* of the one part, and *Richard Hippesley* of *Stone Easton* in the county of *Somerset* gent. nephew of the said *John Organ* the brother, that is to say, the second son of *Elizabeth Hippesley* widow, the natural sister of the said *John Organ* the brother, of the other part, at *Stanton* aforesaid in the county aforesaid, the counterpart whereof sealed with the seal of the aforesaid *John Organ* the brother he the said *William Phillips* the now plaintiff brings here into court, the date whereof is the same day and year abovesaid; and in consideration of the natural love and affection which he had and bore towards the said *Richard Hippesley*, and in consideration of the blood between them, and for the better preferment and advancement, maintenance and livelihood of the said *Richard Hippesley* and his brother in the same indenture afterwards named, he the said *John Organ* the brother for himself and his heirs covenanted, granted and agreed to and with the said *Richard Hippesley* and his heirs, that he the said *John Organ* the brother, his heirs and assigns, and every of them, and all and every other person and persons and their heirs, who then were or from thence afterwards should stand and be seised of and in the said mediety of the advowson aforesaid, should stand and be seised of the same, to the use and behoof of the said *Richard Hippesley* and the heirs of the body of the said *Richard Hippesley* lawfully to be begotten; and for want of such issue, to the use and behoof of *Robert Hippesley* the brother of him the said *Richard Hippesley* and the heirs of the body of the said *Robert Hippesley* lawfully to be begotten; and for want of such issue to the use and behoof of the said *John Organ* the brother and his heirs and assigns for ever, and to no other uses, intents or purposes whatsoever, as by the indenture aforesaid last mentioned

One mediety descends.

Covenant to stand seised.

In consideration of blood.

Of one mediety to the use of *R. H.* in tail, remainder in tail to *R. H.* remainder to the use of the covenantor in fee.

more

more fully appears; by virtue of which said indenture, and by force of a certain act made and provided in the parliament of the lord *Henry* the eighth late king of *England*, holden at *Westminster* in the county of *Middlesex* on the fourth day of *February* in the 27th year of his reign, for transferring uses into possession, the aforesaid *Richard Hippesley* was seised of the mediety of the advowson aforesaid as of fee tail and right, the remainder thereof in form aforesaid, to wit, to present in form aforesaid; and the aforesaid *Richard Hippesley* being so seised thereof afterwards at *Stanton* aforesaid in the county aforesaid died, by and after whose death the said mediety of the advowson aforesaid descended to one *Richard Hippesley* esq; as son and heir of the body of the aforesaid *Richard Hippesley*, by which he the said *Richard Hippesley* the son was seised of the said mediety of the advowson aforesaid as of fee tail and right; and the said *Richard Hippesley* the son being so seised thereof afterwards at *Stanton* aforesaid died without issue of his body issuing, by and after whose death the said mediety of the advowson afterwards descended to one *John Hippesley* esq; as the other son and heir of the body of the aforesaid *Richard Hippesley* first named, by which the said *John Hippesley* was seised of the said mediety of the advowson aforesaid as of fee and right; and the said *John Hippesley* being so seised thereof, he the said *John Hippesley* afterwards, to wit, on the 16th day of *January* in the 24th year of the reign of the lord *Charles* the second late king of *England*, &c. at *Stanton* aforesaid in the county aforesaid, by his certain writing which he the said *William Phillips* the now plaintiff (sealed with the seal of the aforesaid *John Hippesley*) brings here into court, the date whereof is the same day and year, gave and granted to *Francis Symes* the elder of *Kelmescot* in the county of *Oxford* gent. and to *William Phillips* the testator of *Eaton Hastings* in the county of *Berks* gent. their executors and assigns, the first and next advowson, donation, nomination, presentation and free disposition of the aforesaid parish church of *Stanton*, otherwise called *Stanton Fitzherbert*, otherwise *Stanton Fitzwarren*, willing and by his same writing granting that it should and might be lawful to and for the said *Francis Symes* and *William Phillips* the testator, their executors and assigns, to present to the said church of *Stanton Fitzherbert*, otherwise *Stanton Fitzwarren*, whensoever or howsoever by death, resignation, deprivation, cession, permutation, dismission, or in any other manner by which the same church should then first and next happen to be void, any honest and learned clerk for the then next turn only, as by the writing aforesaid more fully appears; by

Descent in tail.

Second descent in tail to *R. H.*

who made a grant of the next avoidance to the testator and *F. S.* the executors and assigns.

by virtue of which grant they the ſaid *Francis Symes* and *William Phillips* the teſtator were poſſeſſed of the advowſon of the church of *Stanton* aforeſaid, that is to ſay, to preſent to the ſame church when then firſt and next it ſhould happen to be void; and being ſo poſſeſſed thereof, the aforeſaid

F. S. one of the grantees of the turn dies, and the plaintiff's teſtator ſurvives.

Francis Symes afterwards at *Stanton* aforeſaid in the county aforeſaid died, and the ſaid *William Phillips* the teſtator ſurvived and was alone poſſeſſed of the advowſon aforeſaid by right of ſurvivorſhip, &c. And the aforeſaid *William Phillips* the teſtator being ſo poſſeſſed thereof, the church aforeſaid

Avoidance in teſtator's life-time by death.

in the life of the aforeſaid *William Phillips* the teſtator became void by the death of the aforeſaid *Thomas Hotchkis*, and as yet is void, which ſaid avoidance of the church aforeſaid by the death of the aforeſaid *Thomas Hotchkis* is the firſt and next avoidance of the church aforeſaid after the grant aforeſaid made to them the ſaid *Francis Symes* and *William Phillips* by the aforeſaid *John Hippeſley* in form aforeſaid, and

And it belonged to teſtator in his life-time to preſent, but defendants hindered him,

for that reaſon it belonged to the ſaid *William Phillips* the teſtator in his life-time to preſent a fit perſon to the church aforeſaid ſo being void; and the aforeſaid biſhop and *John Berrow* unjuſtly hindered him the ſaid *William Phillips* the teſtator, and the aforeſaid *William Phillips* the teſtator (the church aforeſaid being ſo void as before is ſet forth) afterwards, to wit, on the 21ſt day of *June* in the ſixth year of the reign of our lord the now king and of the lady *Mary* the late queen of *England*, &c. at *Stanton* aforeſaid in the

who made his will, and the plaintiff his executor,

county aforeſaid made his laſt will and teſtament, and by the ſame conſtituted and ordained the aforeſaid *William Phillips* the now plaintiff executor of his will aforeſaid, and afterwards there died, after the death of which ſaid *William Phillips* the teſtator the aforeſaid *William Phillips* the now plaintiff took upon himſelf the burthen and execution of

who proved the will, &c. and ſo it belongs to the plaintiff to preſent.

the will aforeſaid, and hath proved that will in due form of law, to wit, at *Stanton* aforeſaid, and for that reaſon at preſent it belongs to him the ſaid *William Phillips* the now plaintiff to preſent a fit perſon to the church aforeſaid ſo void, and the aforeſaid biſhop and *John Berrow* unjuſtly diſturb [hinder] him the ſaid *William Phillips* the now plaintiff; whereupon he the ſaid *William Phillips* the now plaintiff ſaith that he is injured, and hath ſuſtained damage to the value of ſix hundred pounds, and thereupon he

Averment that the grantor is living, and the identity of the church.

brings ſuit, &c. with this, that he the ſaid *William Phillips* the now plaintiff will verify that the aforeſaid *John Hippeſley* is ſtill living and in full life, to wit, at *Stanton* aforeſaid in the county aforeſaid, and that the church of *Stanton*, otherwiſe *Stanton Fitzwarren*, otherwiſe *Stanton Fitzherbert*, is one and the ſame church, and not another

nor

nor different; and he brings here into court the letters testamentary of the aforesaid *William Phillips* the testator, by which it sufficiently appears to the court here that he the said *William Phillips* the now plaintiff is executor of the will aforesaid, and hath the administration thereof, &c.

Profert of the will.

And the aforesaid *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, by *John Carpenter* their attorney come and defend the force and injury when, &c. And the aforesaid *John Berrow* saith that he is parson imparsonee of the church aforesaid of the collation of the aforesaid bishop; and the aforesaid bishop and *John Berrow* further say that the aforesaid *William Phillips* the executor ought not to have his action aforesaid against them, because they say that the aforesaid church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert*, became void by the death of the aforesaid *Thomas Hotchkis* on the 20th day of *September* in the year of our Lord 1693, and was so void until the 23d day of *April* in the year of our Lord 1694, upon which day at *Stanton* aforesaid the aforesaid bishop, because at that time six months after the avoidance of the same church were fully elapsed and devolved, being the ordinary of that place, collated the aforesaid *John Berrow* to that church then being void, as it was well and lawful for him; and this they are ready to verify: whereupon they pray judgment if the aforesaid *William* the executor ought to have his said action against them, &c.

Plea, parson imparsonee, defendants admit the avoidance, and the bishop collated by lapse.

And the aforesaid *William Phillips* the executor saith that he by any thing above alledged ought not to be barred from having his action aforesaid, because he saith that well and true it is that the aforesaid church of *Stanton*, otherwise *Stanton Fitzwarren*, otherwise *Stanton Fitzherbert* aforesaid, became void by the death of the aforesaid *Thomas Hotchkis* on the aforesaid 20th day of *September* in the year of our Lord 1693 abovesaid, as the aforesaid bishop and *John Berrow* in pleading have alledged. But he the said *William Phillips* the executor further saith that after the aforesaid 20th day of *September* in the year of our Lord 1693 abovesaid and before the said 23d day of *April* in the year of our Lord 1694 within six months after the death of the aforesaid *Thomas Hotchkis*, that is to say, on the 16th day of *October* in the year of our Lord 1693 the aforesaid *William Phillips* the testator by his writing sealed with his seal, the date whereof is the same 16th day of *October* in the year of our Lord 1693 at *Stanton* aforesaid in the county aforesaid presented one *John Symes*, master of arts, his clerk, to the aforesaid bishop, being then the ordinary of the aforesaid place of *Stanton*, otherwise *Stanton Fitzwarren*,

Replication, admits the time of the avoidance, but says that within 6 months the testator by writing presented *J. S.* and requested the bishop to admit him, who refused.

otherwise *Stanton Fitzherbert*, and then and there requested the aforesaid bishop to admit and institute him the said *John Symes* to the church aforesaid so being void by the death of the aforesaid *Thomas Hotchkis*, which said *John Symes* the aforesaid bishop then and there absolutely refused to admit and institute to the church aforesaid upon the aforesaid presentation of the said *William Phillips* the testator, and hindered him the said *William Phillips* the testator to present; and this he is ready to verify; whereupon he prays judgment and his damages by occasion of the hindrance [or disturbance] aforesaid, and also a writ to the aforesaid bishop, to be adjudged to him, &c.

Rejoinder admits the presentation, but says that *J. S.* took it away and desired time to prepare himself for examination, and never came again to be examined,

And the aforesaid bishop and *John Berrow* say that well and true it is that the aforesaid *William Phillips* the testator, by his writing sealed with his seal, presented the aforesaid *John Symes*, as he the said *William* the executor above in replying hath alledged: but they the said bishop and *John Berrow* further say that afterwards and within six months after the avoidance of the church aforesaid, that is to say, on the aforesaid 16th day of *October* in the year of our Lord 1693 abovesaid, the aforesaid *John Symes* at *Stanton* aforesaid brought the presentation aforesaid to the aforesaid bishop, and requested the aforesaid bishop to give the said *John Symes* a few days to prepare himself to be examined of his sufficiency in literature to have the church aforesaid, and that the aforesaid bishop thereupon, upon the request of the aforesaid *John Symes*, then and there gave leave to the aforesaid *John Symes* to go away and there to return to the aforesaid bishop within three days next following to be examined of his sufficiency aforesaid, which said three days were ended long before the end of six months after the avoidance of the church aforesaid by the death of the aforesaid *Thomas Hotchkis*, that is to say, by the space of one month, to wit, at *Stanton* aforesaid. And the aforesaid bishop and *John Berrow* further say that he the said bishop for the aforesaid three days afterwards there was ready to examine the aforesaid *John Symes* of his sufficiency aforesaid, and that the aforesaid *John Symes* neither within the aforesaid three days nor ever afterwards came again, nor offered himself to the aforesaid bishop to be examined of his sufficiency aforesaid, by which the aforesaid church remained void for the space of six months and upwards after the aforesaid avoidance by the death of the aforesaid *Thomas Hotchkis*, upon which he the said bishop collated the aforesaid *John Berrow* to that church so void, which said *John Berrow* was inducted in the same church in due form of law; without this, that the aforesaid

so the bishop collated *J. B.* the other defendant,

bishop

bishop absolutely refused to admit and institute the aforesaid *John Symes* to the church aforesaid upon the presentation of the aforesaid *William Phillips* the testator, as the aforesaid *William Phillips* the executor hath above alledged; and this they are ready to verify: whereupon they pray judgment, and that the aforesaid *William* the executor may be barred from his action aforesaid, &c.

and traverses that he refused to admit *J. S.*

And the aforesaid *William Phillips* the executor as before saith, that the aforesaid bishop absolutely refused to admit and institute the aforesaid *John Symes* to the church aforesaid upon the presentation of the aforesaid *William Phillips* the testator, as the aforesaid *William Phillips* the executor hath above in replying alledged; and he prays that this may be inquired of by the country, and the aforesaid bishop and *John Berrow* likewise, &c. therefore the sheriff is commanded that he cause to come here from the day of the Holy *Trinity* in three weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. At which day the parties come here, &c. and the sheriff hath not sent the writ, therefore as before the sheriff is commanded that he cause to come here from the day of Saint *Michael* in three weeks twelve, &c. to recognize in form aforesaid, &c. At which day here come the parties aforesaid, &c. and the sheriff hath not sent the writ, therefore as before the sheriff is commanded that he cause to come here in eight days of the purification of the blessed *Mary* twelve, &c. to recognize in form aforesaid, &c. At which day the jury between the parties aforesaid of the plea aforesaid was thereupon respited between them here until this day, that is to say, from the day of *Easter* in fifteen days then next following, unless the justices of our lord the king assigned to take the assises in the county aforesaid by form of the statute, &c. on *Saturday* the 11th day of *March* next, past, at *New Sarum* in the county aforesaid before come: and now here at this day comes the aforesaid *William* by his attorney aforesaid; and the aforesaid justices assigned to take the assizes before, &c. have sent here their record in these words, (to wit) Afterwards on the day and at the place within contained before *Thomas Rokeby* knt. one of the justices of the lord the king assigned to hold pleas before the king himself, and *John Powell* knt. one of the justices of the said lord the king of the bench, justices of him the said lord the king assigned to take the assizes in the county of *Wilts* by form of the statute, &c. came as well the within named *William Phillips* gent. the executor of the last will and testament of *William Phillips* gent. his father lately deceased, as the within written *Gilbert* bishop of *Salisbury* and *John*

Surrejoinder and issue upon the traverse.

Venire facias awarded.

The sheriff *non misit breve.*

Nisi prius.

Postea returned.

John Berrow clerk, by their attornies within contained; and the jurors of the jury whereof mention is within made, being called likewise came, who being chosen, tried and sworn to speak the truth of the matter within contained, say upon their oath that the aforesaid *Gilbert* bishop of *Salisbury* within named absolutely refused to admit and institute the aforesaid *John Symes* to the church within mentioned upon the presentation of the aforesaid *William Phillips* the testator, as the aforesaid *William Phillips* the executor hath within in replying thereupon alledged. And the jurors aforesaid upon their oath further say that the church aforesaid is full of the aforesaid *John Berrow* of the collation of the aforesaid *Gilbert* bishop of *Salisbury*, as by him is within alledged, and that the church aforesaid is and at the time when, &c. was of the value of 120*l.* by the year in all issues beyond reprises; and the jurors aforesaid assess the damages of him the said *William Phillips* the executor for his costs and charges by him laid out about his suit in this behalf to forty shillings, therefore no respect being had to the aforesaid forty shillings of the damages, costs and charges aforesaid by the jury aforesaid by occasion of the hindrance [disturbance] aforesaid assessed, because such damages or costs by the law of the land in this case are in no wise to be adjudged, it is considered that the said *William Phillips* the executor do recover against the aforesaid bishop of *Salisbury* and *John Berrow* his presentation to the church aforesaid, and his damages to the value of that church for the half of one year, which in themselves amount to sixty pounds by the jury aforesaid in form aforesaid assessed; and let him have a writ to the archbishop of *Canterbury*, primate of all *England* and metropolitan of that place (for that the aforesaid bishop of *Salisbury* is a party, &c. because the said *John Berrow* is admitted and instituted to the same church upon the collation of the aforesaid bishop of *Salisbury*, and is inducted in the same) to remove the aforesaid *John Berrow* from that church, and to admit a fit person to the said church upon the presentation of the aforesaid *William Phillips* the executor; and the aforesaid bishop of *Salisbury* and *John Berrow* in mercy, &c. Afterward, that is to say, on *Monday* next after three weeks of Saint *Michael* in this same term before the lord the king at *Westminster* come the aforesaid bishop and *John Berrow* by *Adrian Moore* their attorney, and say that in the record and process aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, (to wit) that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the aforesaid *William Phillips* against the aforesaid bishop and *John Berrow*, where by the law of the land

Verdict that the bishop refused to admit *J. S.* upon the plaintiff's testator's presentation.

And that the church is full of the collation of the bishop, and is of the yearly value of 120*l.* and assess 40*s.* costs, which are not respected, there being no cost by law in *Quare Imp.* Judgment,

and a writ to the archbishop awarded.

Mercy. Errors assigned.

land of this realm of *England that* judgment ought to have been given for the aforesaid bishop and *John Berrow* against him the said *William Phillips*, therefore in *that* there is manifest error; there is also error in this, (to wit) that the record aforesaid now here sent before our lord the king is defective in this, (to wit) that the original writ, and the return of the same between the parties aforesaid in the plea aforesaid are wholly omitted out of that record, and as yet remain in the custody of the keeper of the writs of the lord the now king of the bench not certified to him the said lord the king; and they the said bishop and *John Berrow* pray a writ of the said lord the now king to be directed to the keeper of the writs of our said lord the now king of the bench aforesaid to certify the writ aforesaid, together with the return of the same writ to the said lord the king, and it is granted to them &c. By which it is commanded to *William Thursby* esq; keeper of the writs of the lord the king of the bench aforesaid, that having searched the original writs of the county of *Wilts* of the term of the Holy *Trinity* in the eighth year of the reign of the said lord the now king being in his custody of record, he do send without delay what he shall find in the same concerning the writ aforesaid, together with the whole return of the same writ as fully and intirely as they remain in his custody to the lord the king wheresoever, &c. together with the writ of the said lord the king to him thereupon directed, &c. which said keeper of the writs by virtue of that writ to him thereupon directed hath certified to him the said lord the king, that, having searched the original writs of his county of *Wilts* of the aforesaid term of the Holy *Trinity* in the eighth year of his reign affiled of record in his custody, there is had a certain original writ between the parties aforesaid of the plea aforesaid in his custody affiled of the aforesaid term, the tenor of which said writ, together with the return of the same, follows in these words, *William* the third by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Wiltshire*, greeting: command *Gilbert* bishop of *Salisbury* and *John Berrow* clerk, that justly and without delay they permit *William Phillips* executor of the will of *William Phillips* his father lately deceased, to present a fit person to the church of *Stanton*, which is void and belongs to his gift as he saith; and whereupon he complains that the aforesaid bishop and *John* unjustly hinder [disturb] him, and unless they will do this, and the aforesaid executor shall make you secure of prosecuting his claim, then summon by good summoners the

Diminution alledged.

Certiorari to the *Custos Brevium* of *C. B.*

to search for and send the original to the king's bench.

The original writ and the return thereof.

the aforesaid bishop and *John*, that they be before our justices at *Westminster* from the day of the Holy *Trinity* in fifteen days, to shew why they will not do this; and have you there the summoners and this writ. Witness *Thomas* archbishop of *Canterbury*, and the rest of the keepers and justices of the realm at *Westminster* the 28th day of *May* in the 8th year of our reign. *Hale*. Essoin for the bishop, adjourned for the bishop until three weeks from the day of Saint *Michael*, the same day, for the clerk, of essoin. For the clerk, adjourned until the morrow of Saint *Martin*, the same day for the bishop. *W. Hall*. Pledges of prosecuting, *John Doe* and *Richard Roe*. Summoners *Thomas Eyre*, *John Russel*. *Edward Somner* esq; sheriff. Which said writ of *certiorari* together with the return thereof is filed among the records without day of that term. And hereupon the aforesaid *William Phillips* by *Joseph Sherwood* his attorney immediately here in court likewise comes, and thereupon the aforesaid bishop and *John Berrow* (as before) say, that in the record and process aforesaid, and also in the giving of the judgment aforesaid, there is manifest error, alledging the errors aforesaid by them in form aforesaid above alledged, and pray that the judgment aforesaid for the errors aforesaid and others being in the record and process aforesaid may be reversed, annulled and wholly had for nothing, and that they may be restored to all things which they have lost by occasion of the judgment aforesaid; and that the court of the said lord the king now here may proceed to the examination as well of the record and process aforesaid, as of the matters aforesaid above assigned for errors; and that the aforesaid *William* may rejoin to the errors aforesaid; upon which he the said *William* saith that neither in the record and process aforesaid, nor in the giving of the judgment aforesaid, is there any error; and he likewise prays that the court of the said lord the king now here do proceed to the examination as well of the record and process aforesaid as of the matter aforesaid above assigned for error; and that the judgment aforesaid in all things may be affirmed: but because the court of the said lord the king now here are not yet advised of their judgment to be given of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king until ———— wheresoever, &c. of hearing their judgment thereupon, for that the court of the said lord the king now here are not yet thereof, &c.

Essoins.

Pledges, Summoners.

The same errors as before.

In nullo est erratum,

and prays the judgment may be affirmed.

The judgment was affirmed. See the report.

Pleas

Pleas before the Lord the King at Westminster *of the Term of* Easter *in the 12th Year of the Reign of* William *the Third, now King of* England, &c. Roll 108.

Hilliard *against* Cox. 1 Ld. Raym. 562.

Berkshire, (to wit) BE it remembered that heretofore, to wit, in the term of Saint *Michael* last past before our lord the king at *Westminster* came *Daniel Hilliard* clerk administrator of all and singular the goods and chattels, rights and credits which were of *John Cox* deceased at the time of his death, who died intestate, by *Edward Chapman* his attorney, and brought into the court of the said lord the king then there his certain bill against *Thomas Cox* in the custody of the marshal, &c. of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill followeth in these words, to wit, *Berkshire*, to wit, *Daniel Hilliard* clerk, administrator of all and singular the goods and chattels, rights and credits which were of *John Cox* deceased at the time of his death, who died intestate, complains of *Thomas Cox*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, that whereas the aforesaid *Thomas* on the first day of *March* in the 11th year of the reign of our lord *William* the third now king of *England*, &c. at *Farringdon* in the county aforesaid, was indebted to the aforesaid *John* in his life-time in one hundred shillings of lawful money of *England* for divers goods, wares and merchandizes of him the said *John* by the said *John* before that time in his life-time to the said *Thomas*, at the special instance and request of him the said *Thomas* sold and delivered; and being so indebted, the aforesaid *Thomas* in consideration thereof afterwards, to wit, the same day and year at the place abovesaid assumed upon himself, and to him the said *John* in his life-time then and there faithfully promised that he the said *Thomas* the said 100 *s.* to the aforesaid *John* when he should be thereunto afterwards requested would well and faithfully pay and satisfy. And also whereas afterwards, to wit, on the second day of *March* in the year abovesaid at *Farringdon* aforesaid, in consideration that the aforesaid *John* in his life-time, and at the like instance and request of him the said *Thomas* had sold and delivered to him the said *Thomas* divers

Assumpsit by an administrator for goods sold and delivered.

Quantum valebant.

divers other goods, wares and merchandizes of him the said *John*, the aforesaid *Thomas* assumed upon himself, and to the said *John* then and there faithfully promised that he the said *Thomas* would well and truly pay and satisfy to him the said *John* so much money for the goods, wares and merchandizes aforesaid last mentioned, as those goods, wares and merchandizes were reasonably worth at the time of the sale and delivery of the same, when he should be thereunto afterwards requested. And the said *Daniel* in fact saith that the goods, wares and merchandizes aforesaid last mentioned at the time of the sale and delivery of the same were reasonably worth another hundred shillings of like lawful money of *England*, to wit, at *Farringdon* aforesaid, and thereof he the said *Thomas* then and there had notice: nevertheless the said *Thomas* not at all regarding his said several promises and undertakings made in manner aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the aforesaid *John* in his life-time and the aforesaid *Daniel* after the death of him the said *John* in this behalf, hath not paid the said several sums of money to the said *John* in his life-time, or to the aforesaid *Daniel* after the death of the said *John*; (to which said *Daniel* administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *John* at the time of his death after the death of him the said *John* was in due manner committed by *Joseph Woodward* doctor of laws, and archdeacon of the archdeaconry of *Berks* official lawfully constituted, to wit, on the 10th day of *April* in the year of our Lord 1699 at *Farringdon* aforesaid, to which said official the committing of the administration aforesaid in this behalf of right did belong) nor hath in any wise satisfied them or either of them for the same, although to do this the aforesaid *Thomas* after the death of him the said *John* and after the administration aforesaid in form aforesaid committed, to wit, on the 20th day of *April* in the 11th year abovesaid at *Farringdon* aforesaid was requested by the aforesaid *Daniel*, but hath altogether refused to pay or in any wise to satisfy the same to the said *John* in his life-time and to the aforesaid *Daniel*; after the death of him the said *John* and as yet refuses to pay or satisfy the same to the said *Daniel*; whereupon he the said *Daniel* saith that he is injured, and hath sustained damage to the value of 10 *l.* and thereupon he brings suit, &c. And he the said *Daniel* brings here into court the letters of administration of the aforesaid *Joseph Woodward*, which testify the commission of the administration aforesaid in form aforesaid, the date whereof is on the day and year abovesaid, &c.

Breach.

Letters of administration committed.

Profert of the letters of administration.

And

Imparlance.

And now at this day, to wit, *Wednesday* next after fifteen days of *Easter* in this same term, until which day the aforesaid *Thomas Cox* had leave to imparl to the bill aforesaid and then to answer, &c. before the lord the king at *Westminster* comes as well the said *Daniel Hilliard* by his attorney aforesaid as the said *Thomas Cox* by *Edward Searle* his attorney; and the said *Thomas Cox* defends the force and injury when, &c. and prays *oyer* of the letters of administration aforesaid now brought here into court and in the declaration aforesaid above specified, and they are read to him in these words, to wit, *Joseph Woodward* doctor of laws, archdeacon of the archdeaconry of *Berks* official lawfully constituted to our beloved in Christ *Daniel Hilliard* clerk, principal creditor of *John Cox* while he lived, of *Newbury* within the county and archdeaconry of *Berks* aforesaid grocer, lately deceased, greeting in the Lord: whereas the said *John Cox* (so as aforesaid) deceased lately died intestate, we therefore desiring that the goods, rights and credits of the said deceased be well and faithfully administered, and converted and disposed to be administered to pious uses, therefore for the well and faithfully disposing of the goods, rights and credits of the aforesaid deceased, and also for demanding, collecting, levying and requiring all credits whatsoever of the said deceased, and which belonged to the said deceased whilst he lived and at the time of his death, and for the payment of what the said deceased at such time of his death was indebted, as far as such goods, rights and credits to this extend, according to the value thereof, it is permitted to you, in whose fidelity we do in this behalf confide, being sworn in due form of law upon God's Holy Evangelists, well and faithfully to administer the same, and to make a full and faithful inventory of all and singular the goods, rights and credits of the said deceased, and to exhibit the same into the registry of the said archdeacon of *Berks* aforesaid on or before the first day of the month of *June* next ensuing, and also to render thereof a full and true account, calculation or estimation of and concerning your administration on or before the first day of *March* which shall be in the year of our Lord 1699. By the tenor of these presents we commit full power, and ordain, depute and constitute you by these presents administrator of all and singular the goods, rights and credits of the said deceased, (*Ann Cox* the widow and relict of the same deceased having first renounced in writing the administration of the goods, &c.) dated at *Oxford* under the seal of our office on the aforesaid 10th day of *April* in the year of our Lord 1699, which being read and heard, he the said *Thomas* saith that the

Defendant prays *oyer* of the letters of administration,

and pleads that at the time of the death of the intestate he (defendant) was an inhabitant in another diocese.

the aforesaid *Daniel* ought not to have or maintain his said action thereof against him, because he saith that he the aforesaid *Thomas* at the time of the death of the aforesaid *John Cox*, and at the time of the committing of the administration aforesaid, and a long time before, was an inhabitant and resiant in the city of *Oxford* in the county of *Oxford*, which said city is and always hath been within the diocese of *Oxford*, and out of the archdeaconry of *Berks* aforesaid, and the jurisdiction of the archdeacon of that archdeaconry, which said archdeaconry and the whole county of *Berks* aforesaid are and always have been within the diocese of *Salisbury* and not within the diocese of *Oxford*; by which the committing of the administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *John Cox* at the time of his death of right did belong to *Thomas* by divine providence then and as yet archbishop of *Canterbury*, by reason of his prerogative, and not to the aforesaid archdeacon of the archdeaconry of *Berks*, or any other inferior judge; and the aforesaid letters of administration brought here into court are void and of no value in law, and this he is ready to verify: whereupon he prays judgment if the aforesaid *Daniel* ought to have or maintain his action thereupon against him, *&c.*

Special demurrer.

And the aforesaid *Daniel Hilliard* saith that he by any thing by the said *Thomas Cox* above in pleading alledged ought not to be barred from having his said action thereupon against him the said *Thomas*, because he saith that the plea aforesaid by him the said *Thomas* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to bar him the said *Daniel* from having his said action thereupon against him the said *Thomas*; to which said plea in manner and form aforesaid above pleaded he the said *Daniel* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea in this behalf, he the said *Daniel* prays judgment and his damages by occasion of the premisses to be adjudged to him, *&c.* And for causes of this demurrer in law according to the form of the statute in such case made and provided, he the said *Daniel* demonstrates and sheweth to the court here these causes following, that is to say, for that it doth not appear by the plea aforesaid that the said *Thomas Cox* was not an inhabitant within the diocese of the bishop of *Salisbury* at the time of the death of the said *John Cox*, and that the said plea is uncertain and wants form, *&c.*

And

And the aforesaid *Thomas Cox* saith that the plea aforesaid by him the said *Thomas* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to bar him the said *Daniel* from having his said action thereupon against him the said *Thomas*; which said plea and the matter in the same contained, he the said *Thomas* is ready to verify and prove as the court, &c. And because the aforesaid *Daniel* doth not answer to that plea, nor hitherto in any wise denies it, he the said *Thomas* as before prays judgment, and that the aforesaid *Daniel* may be barred from having his said action thereupon against him the said *Thomas*, &c. But because the court of the said lord the king now here are not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid before the lord the king at *Westminster* until ——— next after ——— to hear their judgment thereupon, for that the court of the said lord the king now here are not yet, &c.

Joinder in demurrer.

Curia advisare vult.

Sir Creswell Levinz *against* Randolph. 1 Ld. Raym. 594.

This was Debt upon a Bond given by a Member of Grays-Inn *for the Benefit of the Society upon his Admission.*

THE defendant craves *oyer* of the bond and condition, which was, that if the above bounden *Herbert Randolph* shall from time to time and at all times hereafter well and truly pay or cause to be paid all such sum and sums of money as shall become due by him for commons, vacations, pensions, dues and duties whatsoever belonging unto *Grays-Inn*, and shall observe all such order and orders of pensions as shall be made from time to time and at all times hereafter in *Grays-Inn* aforesaid, that then, &c. Upon which the defendant pleaded, " that he from the time of the making of the writing aforesaid until the day of exhibiting the bill aforesaid hath well and faithfully paid all sums of money, and observed all the orders in the condition aforesaid specified, mentioned and contained on his part to be paid and observed according to the form and effect of the same condition, to wit, at the parish of Saint *Andrew* aforesaid in the county aforesaid; and this he is ready to verify," &c.

And the aforesaid *Creswell* saith that he by any thing by the aforesaid *Herbert* above in pleading alledged ought not to be barred from having his action aforesaid thereof against him,

Replication.

him, because protesting that the aforesaid *Herbert* hath not paid any sums of money, nor observed any orders in the condition aforesaid specified on his part to be paid and observed according to the form and effect of the same condition, for plea the said *Creswell* saith that *Grays-Inn* aforesaid, commonly called *Grays-Inn* in the aforesaid parish of Saint *Andrew Holborn* in the county aforesaid is, and for a long time, and for a long continuance past hath been an antient inn of court, and an antient, laudable and honourable society of gentlemen studying the laws of this realm of *England*, called an inn of court, and also one of the four societies and inns of court of this realm of *England*, of and in which, or in any, or one of those four inns and societies all and singular gentlemen and persons studying the laws of *England* to be called to, professed and allowed at the bar, and for counsellors at law, are admitted, educated and approved, and for all the time aforesaid have been, and have been accustomed so to be, before they are so called to the bar, or are, have been, or could be professed and allowed counsellors at law, in which said *Grays-Inn* and society there are, and for all the time aforesaid there have been several degrees of gentlemen of that society, and amongst others, one, and a principal degree, which consists of readers and their assistants, which said readers and their assistants are, and are named benchers of *Grays-Inn* or the society, and such benchers for the time being are, and for all the time aforesaid have been governors and rulers of that society and inn, having the care (amongst other things) of examining, calling to the bar, and professing and allowing students and members of the said society for counsellors at law, one of which said benchers chosen thereunto, by and amongst themselves from time to time, is, and hath been named the treasurer of *Grays-Inn* aforesaid, and that name and office for two years together usually, or thereabouts, hath, exercises, enjoys, and occupies and uses, and hath used for all the time aforesaid to have, exercise, enjoy and occupy; which said treasurer for the time being amongst other things, as belonging to his said office, taketh and hath taken, and for all the time aforesaid hath been accustomed to take of, and from every person there called to the bar, and professed and allowed for a counsellor at law by the benchers of the said society, or *Grays-Inn*, such writing obligatory with such condition a[illegible] specified, at and upon such his calling to the bar there, and every person so called to the bar, and also every person admitted into the same society (while he is one of the members thereof) hath paid and for all the time aforesaid hath been accustomed to pay to such treasurer for the time being for the use of the said

ſaid ſociety a certain little ſum of money, to wit, three ſhillings and four pence yearly in the name of his penſions, to wit, twelve pence in every term of Saint *Michael*, and twelve pence in every term of Saint *Hilary*, and one ſhilling and four pence for the term of *Eaſter* and the term of the Holy *Trinity*, towards the ſuſtaining of the publick and neceſſary charges, expences and coſts of the ſociety aforeſaid, to wit, at *Grays-Inn* aforeſaid in the pariſh aforeſaid; and the ſaid *Creſwell* further ſaith that at the time of making the writing aforeſaid he himſelf was one of the benchers of that ſociety and treaſurer of *Grays-Inn* aforeſaid, being before thereunto in due manner choſen, to wit, at that inn in the ſaid pariſh; and that the aforeſaid *Herbert* (then, and before being one of the gentlemen and members of the ſame ſociety) then and there by the benchers of that ſociety and inn was called to the bar, and allowed and profeſſed a counſellor at law according to the laudable cuſtom thereof for all the time aboveſaid there uſed, and thereupon he then and there made the ſaid writing obligatory with the condition aforeſaid in form aforeſaid to him the ſaid *Creſwell*, and as yet is one of the members of that ſociety there, and that on the laſt day of the term of the Holy *Trinity* in the 9th year of the reign of our lord *William* the third now king of *England*, &c. (one *Daniel Bedingfield* eſq; then and before, and afterward being treaſurer of the ſociety of *Grays-Inn* aforeſaid) the ſum of 3*s.* 4*d.* for the penſions of him the ſaid *Herbert* belonging to the ſaid inn for one whole year then ended was in arrear and as yet is unpaid, contrary to the form and effect of the condition aforeſaid; and this he is ready to verify: whereupon he prays judgment and his debt aforeſaid together with his damages by occaſion of the detention of that debt to be adjudged to him, &c.

W. Dixon,
L. Agar.

To this replication the defendant demurred and ſhewed for cauſe, that by the plea aforeſaid it doth not appear that he the ſaid *Herbert* hath in any manner broken the condition of the ſaid writing obligatory, and that it is uncertain and wants form, &c.

Geo. Barrett.

The plaintiff joined in demurrer. Judgment for the plaintiff.

Pleas

Pleas before the Lord the King at Westminster *of the Term of Saint* Hilary *in the* 13*th Year of the Reign of King* William *the Third.* Roll 460.

Ashby *against* White and Others. 2. Ld. Raym. 938.

Buckinghamshire, (to wit) MATTHIAS *Ashby* complains of *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, being in the custody of the marshal of the *Marshalsea* of the lord the king before the king himself, for that, to wit, That whereas on the 26th day of *November* in the 12th year of the reign of the lord the now king, a certain writ of the said lord the now king issued out of the court of chancery of him the said lord the now king at *Westminster* in the county of *Middlesex*, directed to the then sheriff of *Buckinghamshire* aforesaid, reciting that the said lord the king, by the advice and assent of his council, for certain arduous and urgent businesses concerning him the said lord the king, the state, and the defence of his realm of *England*, and of the church of *England*, had ordained his certain parliament to be holden at his city of *Westminster* on the sixth day of *February* then next coming, and there with the prelates, nobles and peers of his said kingdom to have discourse and treaty, the said lord the now king commanded the then sheriff of *Buckinghamshire* by the said writ firmly enjoining, that, having made proclamation in his next said county after the receipt of the same writ to be holden, of the day and place aforesaid, two knights girded with swords, the most fitting and discreet of the county aforesaid, and of every city of that county, two citizens, and of every borough two burgesses of the more discreet and most sufficient, should be freely and indifferently chosen by those, whom such proclamation should concern according to the form of the statute thereupon made and provided, and the names of the same knights, citizens and burgesses so to be chosen, to be insetted in certain indentures thereof to be made between him the then sheriff and those who should be concerned at such election

election (although such persons to be chosen should be present or absent), and should cause them to come at the said day and place, so that they the said knights, citizens and burgesses might severally have full and sufficient power for themselves and the commonalty of the county, cities and boroughs aforesaid, to do and consent to those things which should then happen to be ordained there of the common council of the said realm of him the said lord the now king (by God's assistance) upon the businesses aforesaid, so that for want of such power, or because of an improvident election of the knights, citizens and burgesses aforesaid the said businesses might not in any wise remain undone, and should certify without delay that election made in the full county of him the then sheriff distinctly and openly under his seal and the seals of those who should be concerned at that election, to the said lord the now king in his chancery at the said day and place, sending to him the said lord the king the counterpart of the indenture aforesaid sewed to the same writ together with that writ; which said writ afterwards and before the sixth day of *February* in the writ aforesaid mentioned, to wit, on the 29th day of *December* in the 12th year abovesaid at the borough of *Aylesbury* in the said county of *Bucks* was delivered to one *Robert Weedon* esq; then sheriff of the same county of *Bucks*, to be executed in form of law; by virtue of which said writ the aforesaid *Robert Weedon* being then and there sheriff of the county of *Bucks* aforesaid as before is set forth, afterwards and before the aforesaid 6th day of *February*, to wit, on the 30th day of *December* in the 12th year abovesaid at the borough of *Aylesbury* aforesaid in the said county of *Bucks* made his certain precept in writing under the seal of him the said *Robert Weedon* of his office of sheriff of the county of *Bucks* aforesaid, directed to the constables of the borough of *Aylesbury* aforesaid, reciting the day and place of the parliament aforesaid to be holden, thereby requiring them and giving to them in command, that having made proclamation within the borough aforesaid of the day and place in the same precept recited, they should cause to be freely and indifferently chosen two burgesses of that borough of the more discreet and most sufficient, by those whom such proclamation should concern according to the form of the statutes in such cases made and provided, and the names of the said burgesses so elected (although they should be present or absent) to be inserted in certain indentures between the said sheriff and those who should have interest in such election, and that he should cause them to come at the day and place

in the same precept recited, so that the said burgesses might have full and sufficient power for themselves and the commonalty of the borough aforesaid to do and consent to those things which should then happen to be ordained there of the common council of the said realm (by God's assistance) upon the businesses aforesaid, so that for want of such power, or because of an improvident election of the burgesses aforesaid the said businesses might not remain undone, and that they should without delay certify the election to him the said then sheriff, sending to the same sheriff the counterpart of the indenture aforesaid annexed to the said precept, that he the said sheriff might certify the same to the said lord the king in his chancery at the day and place aforesaid; which said precept afterwards and before the said 6th day of *February*, to wit, on the same 30th day of *December* in the year abovesaid at the borough of *Aylesbury* aforesaid in the said county of *Bucks* was delivered to them the said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon* then, and until and after the return of the same writ being constables of the borough of *Aylesbury* aforesaid, to be executed in form of law; to which said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, by reason of their office of constables of the borough aforesaid the execution of that precept of right did then and there belong: by virtue of which said precept, and by force of the writ aforesaid, they the said burgesses of the borough of *Aylesbury*, being in that behalf duly forewarned, afterwards and before the sixth day of *February*, to wit, on the 6th day of *January* in the 11th year abovesaid, at the borough of *Aylesbury* aforesaid, before them the said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, the constables aforesaid, were assembled to elect two burgesses for the borough according to the exigency of the writ and precept aforesaid, and during that assembly to that intention, and before such two burgesses, by virtue of the writ and precept aforesaid, were elected, to wit, on the day and year last abovesaid at the borough of *Aylesbury* aforesaid in the county aforesaid, he the said *Matthias Ashby* then and there being a burgess and an inhabitant of the borough aforesaid, and not receiving alms there or any where else then or before, but being duly qualified and intitled to give his vote for the choosing of two burgesses for the borough aforesaid according to the exigency of the writ and precept aforesaid, before them the said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, the four constables of that borough, to whom then and there it did duly belong to take and allow the vote of him the said *Matthias Ashby* of

and

and in the premisses, was ready and offered to give his vote for choosing *Thomas Lee*, bart. and *Simon Mayne* esq; two burgesses for that parliament, by virtue and according to the exigency of the writ and precept aforesaid; and the vote of him the said *Matthias* then and there of right ought to have been admitted, and the aforesaid *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, so being then and there constables of the borough aforesaid, were then and there requested to receive and allow the vote of him the said *Matthias Ashby* in the premisses: nevertheless they the said *William White*, *Richard Talbois*, *William Bell* and *Richard Heydon*, being then and there constables of the borough aforesaid, well knowing the premisses, but contriving and fraudulently and maliciously intending to damnify him the said *Matthias Ashby* in this behalf, and wholly to hinder and disappoint him of his privilege of and in the premisses, did then and there hinder him the said *Matthias Ashby* to give his vote in that behalf, and did then and there absolutely refuse to permit him the said *Matthias Ashby* to give his vote for choosing two burgesses for that borough to the parliament aforesaid, and did not receive, nor did they allow the vote of him the said *Matthias Ashby* for that election: and two burgesses of that borough were elected for the parliament aforesaid (he the said *Matthias Ashby* being excluded as before is set forth) without any vote of him the said *Matthias Ashby*, then and there by virtue of the writ and precept aforesaid, to the enervation of the aforesaid privilege of him the said *Matthias Ashby* of and in the premisses aforesaid: whereupon the said *Matthias Ashby* saith that he is injured, and hath sustained damage to the value of 200 *l.* and thereupon he brings suit, *&c.* Not guilty. Verdict for the plaintiff.

N. Judgment was arrested in *B. R.* by 3 judges against *Holt.* But on the 14th of *January* 1703, this judgment was reversed in the house of lords, and judgment given for the plaintiff by 50 lords against 16.

Pleas before our Lady the Queen at Westminster *of the Term of the Holy* Trinity *in the fourth Year of the Reign of the Lady* Ann, *now Queen of* England, &c. Roll 211.

Tenant *against* Gouldwin. 2 Ld. Raym. 1089.

Middlesex, (to wit) BE it remembered that heretofore, to wit, in the term of *Easter* last past before the lady the queen at *Westminster* came *Robert Tenant* by *John Rice* his attorney, and brought into the court of the said lady the queen then there his certain bill against *Luke Gouldwin* in the custody of the marshal, *&c.* of a plea of trespass upon the case; and there are pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, to wit, *Robert Tenant* complains of *Luke Gouldwin*, being in the custody of the marshal of the *Marshalsea* of our lady the queen before the queen herself, for that, to wit, That whereas he the said *Robert* on the first day of *October* in the first year of the reign of the lady *Ann* now queen of *England, &c.* and from thenceforth always until this time was possessed and as yet is possessed of one messuage situate, lying and being in *Frith-street* in the parish of Saint *Ann* within the liberty of *Westminster* in the county of *Middlesex*, for a certain term of years not yet ended, and used to place and keep in his cellar parcel of his messuage aforesaid, stores of coals and ale for the use of his family, and also to be sold and merchandized to divers persons who used to buy of him the commodities aforesaid in his messuage aforesaid, to the great profit and advantage of him the said *Robert*, which said cellar lies contiguously and for all the time aforesaid did lie contiguously to a messuage of the aforesaid *Luke* in the parish aforesaid, and used to be separated and fenced from a privy-house of office, parcel of the said messuage of the aforesaid *Luke*, by a thick and close wall which belongs to the said messuage of the aforesaid *Luke* and of right ought to have been repaired by the aforesaid *Luke*, for all the time aforesaid: nevertheless the aforesaid *Luke* well knowing the premisses, but contriving and fraudulently intending unjustly to aggrieve him the said *Robert* in this behalf, and wholly to deprive him the said *Robert* of the use and advantage of the cellar of his messuage aforesaid, and to hinder him

Special action on the case for not repairing a partition wall, whereby the plaintiff was injured.

Averment of the usage for defendant to repair.

Breach.

him of the profit of his commerce aforesaid, on the same first day of *October* in the abovesaid year of the reign of the said lady the queen, and from thenceforth always until this time so negligently kept and repaired the wall aforesaid (although often requested to repair the same, to wit, by him the said *Robert* on the same first day of *October* in the parish aforesaid) that for want of due care and reparation of the same wall the filthinesses and nasty things of the said privy-house of office flowed out of the said privy-house of office by the decayed parts and breaches of the wall aforesaid into the cellar aforesaid of him the said *Robert*, and overflowed the same cellar, to wit, in the parish aforesaid for the whole time aforesaid, by which he the said *Robert* lost the use of his cellar and the profit of his commerce aforesaid for all the time aforesaid; whereupon the said *Robert* saith that he is injured, and hath sustained damage to the value of 100*l.* and thereupon he brings suit, *&c.*

Plaintiff damnified.

The defendant let judgment go by default, and a writ of inquiry of damages was awarded, and damages assessed to 6*l.* And it was moved in arrest of judgment. See the report.

The Queen *against* Mackarty and Fordenbourgh. 2 Ld. Raym. 1179.

An Indictment against the Defendants.

FOR that they, being greedy of dishonest gain, and wickedly, falsly, deceitfully and maliciously intending to defraud *Thomas Cheyne* of *London* haberdasher, of divers his goods and merchandizes, (such a day, year and place) together deceitfully bargained with the aforesaid *T. C.* to barter, sell and exchange a certain quantity of pretensed wine, as good and true new wine of the kingdom of *Portugal*, called *New Lisbon* wine, of him the said *A. F.* for a certain quantity of hats of him the said *T. C.* to the value of 118*l.* of good and lawful money of *England*: and upon the bartering, sale and exchange aforesaid, he the said *A. F.* took upon himself to be a merchant of *London*, and to trade and merchandize as a merchant in wines of the kingdom of *Portugal*, and then and there personated a merchant of *London*, as if he had been a true merchant of *London*, when in fact he the aforesaid *A. F.* never was a merchant of *London*, nor did trade or merchandize as a merchant in wines of the

kingdom of *Portugal*, or in any wine whatſoever as a merchant; and upon the bartering, ſale and exchange aforeſaid, he the aforeſaid *M. M.* took upon himſelf to be a broker of *London*, and did then and there perſonate a broker of *London* as if he was a true broker of *London*, when in fact he the aforeſaid *M. M.* at the time of the bartering, ſale and bargaining aforeſaid, or at any time afterwards was not a broker of *London*; and the aforeſaid *T. C.* giving credit to the ſaid fictitious aſſumptions, perſonatings and deceits, did then and there barter, ſell and exchange to the aforeſaid *A. F.* and did deliver to him the ſaid *M. M.* as the broker between the aforeſaid *T. C.* and *A. F.* for the uſe of him the ſaid *A. F.* a certain quantity of hats of the value of 118 *l.* for ——— hogſheads of the pretenſed wine aforeſaid: and that the aforeſaid *M. M.* and *A. F.* upon the bartering, bargaining and ſale aforeſaid, did affirm that the aforeſaid pretenſed wine was true new wine of the kingdom of *Portugal*, called *New Liſbon* wines, and was the wine of the aforeſaid *A. F.* when in fact the aforeſaid pretenſed wine was not wine of the kingdom of *Portugal*, nor was it drinkable or wholeſome, nor was it the wine of the aforeſaid *A. F.* to the great deceit and damage of him the ſaid *T. C.* and in contempt of the ſaid lady the now queen and of her laws, and againſt the peace of the ſaid lady the now queen, her crown and dignity, &c.

Defendants were found guilty on this indictment, and after motion in arreſt, the judgment was for the queen, for there is enough ſet out to ſhew the defendants were cheats *per cur'*.

Crowther *againſt* Oldfield 2 Ld. Raym. 1225.

This was a Writ of Error in the Common Pleas in an Action upon the Caſe wherein the Plaintiff declared in this Manner, viz.

THAT whereas he (the plaintiff) on the firſt day of *May*, &c. was ſeiſed, and as yet is ſeiſed of and in one meſſuage and ten acres of land with the appurtenances in *N.* parcel of the manor of *W.* and holden by copy of court-roll of that manor as a cuſtomary tenant of the ſame in fee-ſimple according to the cuſtom of the ſame manor; and alſo whereas he the ſaid plaintiff hath, and ought to have, and he and all the cuſtomary tenants of his ſaid tenements with the appurtenances by the cuſtom within the manor aforeſaid, from time whereof the memory of man is

is not to the contrary ufed and approved, have had, and have been accuftomed to have common of pafture in a certain place, pafture or moor called *Warmlees*, parcel alfo of the fame manor, and containing 40 acres in *Northwroine*, for all his commonable cattle levant and couchant upon his cuftomary tenements aforefaid, every year, at all times of the year at his will and pleafure, as belonging and appertaining to the fame tenements with the appurtenances: neverthelefs the aforefaid defendant intending to deprive the plaintiff, *&c.* inclofed the common, by which the plaintiff could not ufe and enjoy his faid common in fo ample and beneficial a manner as before he had ufed and enjoyed the fame, to the plaintiff's damage, *&c.*

Not guilty, and a verdict for the plaintiff; and the common pleas, upon a motion in arreft of judgment gave judgment for the defendant.

But the king's bench reverfed that judgment after great deliberation, the fault in the declaration being helped by the verdict.

N. It fhould have been laid in the declaration, "That the "tenements were held at the will of the lord according to "the cuftom of the manor," and then it would have clearly been fhewn that they were copyhold.

Pleas before the Lord the King at Weftminfter *of the Term of Saint* Hilary *in the 6th Year of the Reign of the Lord* William *the Third, now King of* England, &c. Roll 309.

Lampton *againft* Collingwood. 1 Ld. Raym. 27.

Writ of *audita querela.*

England, (to wit) THE lord the king hath fent to his juftices affigned to hold pleas before the king himfelf his writ clofe in thefe words, (to wit) *William* the third by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, *&c.* To our juftices affigned to hold pleas before us, greeting: we have received information from the grievous complaint of *Ann Lampton* widow, adminiftratrix of the goods and chattels which were of *Robert Lampton* efq; deceafed, That whereas one *Luke Collingwood* lately, that is to fay, in the term of *Eafter* in the

34th

Judgment was recovered against two persons,

34th year of the reign of the lord *Charles* the second late king of *England*, &c. in the court of the same late king before the said late king himself at *Westminster* in the county of *Middlesex*, by the judgment of the same court had recovered against the aforesaid *Robert Lampton* and one *Edmund Craister* esq; by the names of *Edmund Craister* of *Craister* in the county of *Northumberland* esq; otherwise called *Edmund Craister* of *Craister* in the county aforesaid esq; and of *Robert Lampton* of *Newham* in the county of *Northumberland* esq; otherwise called *Robert Lampton* of *Newham* in the county aforesaid gent. four hundred pounds of debt, and also forty shillings which to him the said *Luke* in the same court were adjudged for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him laid out about his suit in that behalf, whereof they were convicted, as by the record and process thereof in our court before us at *Westminster* aforesaid remaining more fully appears: and afterwards the aforesaid *Robert* in the life-time of the aforesaid *Edmund*, that is to say, on the first day of *November* in the first year of the reign of the lord *James* the second late king of *England* died, and he the said *Edmund* survived him the said *Robert*, to wit, at *Morpeth* in the county of *Northumberland*, by which, by the law of *England*, the goods and chattels which were of the aforesaid *Robert* at the time of his death, being in the hands of whatsoever administrator or administratrix of those goods and chattels to be administered, became absolutely discharged of the debt and damages aforesaid, as she the said *Ann* is ready to prove by such ways and means as are fit [convenient]: nevertheless the aforesaid *Luke* contriving and intending her the said *Ann* by pretext of the judgment aforesaid unjustly to aggrieve, and greatly to damnify, heretofore, after the death of him the said *Robert*, that is to say, in the term of the Holy *Trinity* in the fifth year of our reign and of the lady *Mary* late queen of *England*, &c. prosecuted out of the aforesaid court before us and the lady *Mary* our late queen at *Westminster* our certain writ (and of our said late queen *Mary*) of *scire facias* of and upon the judgment aforesaid against the aforesaid *Ann*, administratrix of the goods and chattels aforesaid of the aforesaid *Robert*, directed to the then sheriffs of *London*, by which said writ reciting, That whereas the aforesaid *Luke* lately in the court of the said late king *Charles* the second, before himself the said late king at *Westminster* by bill without the writ of the said late king, and by the judgment of the same court, had recovered against the aforesaid *Edmund Craister*, otherwise called *Edmund Craister* of *Craister* in the county aforesaid esq; and the

one of them dies, and the other survives.

Scire facias sued out against the administratrix of the deceased.

the aforesaid *Robert Lampton*, otherwise called *Robert Lampton* of *Newham* in the county aforesaid gent. the aforesaid 400*l.* of debt, and also the aforesaid 40*s.* for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him laid out about his suit in that behalf whereof they were then convicted, as it appeared of record; reciting also and suggesting that the aforesaid *Edmund* on the 2d day of *July* in the 4th year of the reign of the lord *James* the second late king of *England*, &c. at *London* in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* died, and that the aforesaid *Robert* survived him, and that afterwards the aforesaid *Robert* on the first day of *April* in the second year of our reign and of our said late queen at *London* aforesaid in the parish and ward aforesaid died intestate, and that, after his death, administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *Robert* at the time of his death was committed to the aforesaid *Ann Lampton*, (the debt and damages aforesaid not being satisfied to the aforesaid *Luke*) and that the aforesaid *Luke* had besought us and our said late queen of a fitting remedy in that behalf to be provided for him, we and our said late queen willing what was just in that behalf to be done, by the same writ commanded the said sheriffs of *London*, that by honest and lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before us and our said late queen at *Westminster* aforesaid on *Tuesday* next after fifteen days of the Holy *Trinity* then next following, to shew if any thing she had or knew to say for herself why the aforesaid *Luke* ought not to have his execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, if it should seem expedient to him, and further to do and receive that which the aforesaid court before us and our said late queen should then and there consider thereof in that behalf; and that they should have then there the names of those persons by whom they should give notice to her and that writ, &c. At which day in the same court before us and our said late queen at *Westminster* came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid, to wit, *Thomas Lane* knt. and *Thomas Cooke* knt. then returned to us and our aforesaid late queen upon the writ aforesaid that the aforesaid *Ann* had nothing in her bailiwick, where or by which they could give her notice, neither was she found in the same; and the said *Ann* did not come, therefore as before, by the same court it was then commanded to the same sheriffs of *London*, that by honest and lawful

The sheriffs return *nichil.*

Alias scire facias is awarded.

lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before us and our said late queen at *Westminster* on *Tuesday* next after three weeks of the Holy *Trinity* then next following to shew in form aforesaid, if, &c. and further, &c. The same day was given by the same court then before us and our said late queen to the aforesaid *Luke* there, &c. At which day in the aforesaid court before us and our said late queen came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid as before returned that the aforesaid *Ann* had nothing in their bailiwick, where or by which they could give notice to her, neither was she found in the same; and the aforesaid *Ann*, although at that day being solemnly required, did not come, but made default; therefore it was then and there considered by the same court before us and the aforesaid late queen that the aforesaid *Luke* should have execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, as by the record and process thereof in our court before us at *Westminster* aforesaid remaining more fully appears; and he the said *Luke* purposes and threatens to sue out execution against her the said *Ann* of the debt and damages aforesaid to be levied of the goods and chattels aforesaid, although she the said *Ann* was never summoned in the aforesaid plea of *scire facias*, to shew cause why the said *Luke* ought not to have such execution against her, neither did she appear in that plea, also although she the said *Ann* and those goods and chattels for the cause aforesaid ought of right to be discharged thereof, to the grievous damage and hardship of her the said *Ann*, and against the law and custom of our kingdom of *England*; whereupon she the said *Ann* hath besought us of a fitting remedy to be provided for her by us in this behalf: we being unwilling that the said *Ann* be in any wise injured, and willing that which is just to be done in this behalf, do command you that having heard the complaint of the aforesaid *Ann*, and having called before you the parties aforesaid, and others whom you shall see fit to be called in this behalf, and having from thence heard their reasons thereupon, you cause to be done to the parties aforesaid full and speedy justice, as of right and according to the law and custom of our realm of *England* shall be meet to be done. Witness ourself at *Westminster* the 23d day of *January* in the 6th year of our reign.

The sheriffs return a 2d *nichil*.

Execution adjudged upon the *scire facias* by default,

although the administratrix was never summoned to shew cause, nor did appear.

The plaintiff's *gravamen*.

Audita querela.

Plumpton.

Afterwards, to wit, on *Wednesday* next after fifteen days of Saint *Hilary* in this same term before the lord the king at *Westminster* cometh the aforesaid *Ann Lampton* by *Nicholas Harding*

The declaration upon the writ.

Harding her attorney, and immediately ſaith that the afore-ſaid *Luke* ought not to have execution againſt her the ſaid *Ann* of the debt and damages aforeſaid to be levied of the goods and chattels which were of the aforeſaid *Robert Lampton* at the time of his death in the hands of her the ſaid *Ann*, becauſe ſhe ſaith that the aforeſaid *Luke Collingwood* lately, that is to ſay, in the term of *Eaſter* in the 34th year of the reign of the ſaid late king *Charles* the ſecond aboveſaid, in the court of the ſame late king before the ſaid late king himſelf at *Weſtminſter* in the county of *Middleſex* aforeſaid, by the judgment of the ſame court had recovered againſt the aforeſaid *Robert Lampton* and the aforeſaid *Edmund Craiſter*, by the names of, &c. [as in the writ-part above] the aforeſaid 400 *l.* of debt and alſo 40 *s.* which to him the ſaid *Luke* in the ſame court were adjudged for his damages which he ſuſtained as well by occaſion of the detention of that debt, as for his coſts and charges by him laid out about his ſuit in that behalf whereof they were convicted, as by the record and proceſs thereof in the court of the ſaid lord the now king before the king himſelf at *Weſtminſter* aforeſaid remaining more fully appears. And ſhe the ſaid *Ann* further ſaith that afterwards the aforeſaid *Robert* in the life-time of the aforeſaid *Edmund*, that is to ſay, on the firſt day of *November* in the firſt year of the reign of the ſaid late king *James* the ſecond aboveſaid died, and he the ſaid *Edmund* ſurvived him the ſaid *Robert*, to wit, at *Morpeth* aforeſaid in the county of *Northumberland* aforeſaid, by which by the law of *England* the goods and chattels which were of the aforeſaid *Robert* at the time of his death being in the hands of whatſoever adminiſtrator or adminiſtratrix of thoſe goods and chattels to be adminiſtered, became abſolutely diſcharged of the debt and damages aforeſaid, as ſhe the ſaid *Ann* is ready to prove by ſuch ways and means as are fit [convenient]; nevertheleſs the aforeſaid *Luke* contriving and intending her the ſaid *Ann*, by pretext of the judgment aforeſaid unjuſtly to aggrieve and greatly to damnify, heretofore, after the death of him the aforeſaid *Robert*, that is to ſay, in the term of the Holy *Trinity* in the fifth year of the reign of the lord *William* now king of *England*, &c. and of the lady *Mary* late queen of *England*, &c. proſecuted out of the aforeſaid court then before the ſaid lord the now king and the ſaid late queen *Mary* at *Weſtminſter* aforeſaid, a writ of the ſaid lord the now king and of the ſaid late queen of *ſcire facias* of and upon the judgment aforeſaid againſt the aforeſaid *Ann* adminiſtratrix of the goods and chattels of the aforeſaid *Robert*, directed to the then ſheriffs of *London*, by which ſaid writ reciting that whereas the aforeſaid *Luke* lately in the court

Recovery of the judgment in the king's bench.

One of the defendants in the judgment dies.

Scire facias ſued out againſt the adminiſtratrix of the deceaſed.

court of the said late king *Charles* the second before himself the said late king at *Westminster*, by bill without the writ of the said late king and by the judgment of the same court, had recovered against the aforesaid *Edmund Craister*, otherwise called *Edmund Craister* of *Craster* in the county aforesaid esq; and the aforesaid *Robert Lampton*, otherwise called *Robert Lampton* of *Newham* in the county aforesaid gent. the aforesaid 400*l.* of debt, and also the aforesaid 40*s.* for his damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him laid out about his suit in that behalf whereof they were then convicted as it appeared of record; reciting also and suggesting that the aforesaid *Edmund* on the 2d day of *July* in the 4th year of the reign of the lord *James* the second late king of *England*, &c. abovesaid at *London* aforesaid in the parish of the blessed *Mary of the Arches* in the ward of *Cheape* died, and that the aforesaid *Robert* survived him the said *Edmund*, and that afterwards on the first day of *April* in the second year of the reign of the said lord *William* the now king and of the lady *Mary* late queen of *England* abovesaid at *London* aforesaid in the parish and ward aforesaid he died intestate, and that, after his death, administration of all and singular the goods and chattels, rights and credits which were of the aforesaid *Robert* at the time of his death was committed to the aforesaid *Ann Lampton*, (the debt and damages aforesaid not being satisfied to the aforesaid *Luke*) and that the aforesaid *Luke* had besought the aforesaid lord *William* the now king and the lady *Mary* late queen of *England*, of a fitting remedy in that behalf to be provided for him, and that the said lord the now king and the said late queen willing what was just in that behalf to be done, by the same writ commanded the said sheriffs of *London*, that by honest and lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before the said lord the now king and the said late queen at *Westminster* aforesaid on *Tuesday* next after fifteen days of the Holy *Trinity* then next following, to shew if any thing she had or knew to say for herself why the aforesaid *Luke* ought not to have his execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, if it should seem expedient to him, and further to do and receive that which the aforesaid court before the said lord the now king and the said late queen should then and there consider thereof in that behalf; and that they should have then there the names of those persons by whom they should give notice to her and that writ, &c. At which day in the same court

court before the said lord the now king and the said late queen at *Westminster* came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid, to wit, *Thomas Lane* knt. and *Thomas Cooke* knt. then returned to the said lord the now king and to the said late queen upon that writ that the aforesaid *Ann* had nothing in their bailiwick, where or by which they could give her notice, neither was she found in the same, and that the said *Ann* did not come, therefore as before, by the same court it was then commanded to the same sheriffs of *London*, that by honest and lawful men of their bailiwick they should give notice to the aforesaid *Ann* that she should be before the said lord the now king and the said late queen at *Westminster* on *Tuesday* next after three weeks of the Holy *Trinity* then next following to shew in form aforesaid, if, &c. The same day was given by the same court then before the said lord the now king and the said late queen to the aforesaid *Luke* there, &c. At which day in the aforesaid court before the said lord the now king and the said late queen at *Westminster* came the aforesaid *Luke* in his proper person, and the sheriffs of *London* aforesaid as before returned that the aforesaid *Ann* had nothing in their bailiwick, where or by which they could give notice to her, neither was she found in the same; and the aforesaid *Ann*, although at that day being solemnly required, did not come, but made default; therefore it was then and there considered by the same court before the said lord the now king and the said late queen that the aforesaid *Luke* should have execution of the debt and damages aforesaid of the goods and chattels which were of the aforesaid *Robert* at the time of his death in the hands of her the said *Ann* to be administered, as by the record and process thereof in the court of the aforesaid lord the now king before the king himself at *Westminster* remaining more fully appears; and he the said *Luke* purposes and threatens to sue out execution against her the said *Ann* of the debt and damages aforesaid to be levied of the goods and chattels aforesaid, although she the said *Ann* was never summoned in the aforesaid plea of *scire facias*, to shew cause why the said *Luke* ought not to have such execution against her, neither did she appear in that plea, also although she the said *Ann* and those goods and chattels for the cause aforesaid ought of right to be discharged thereof, to the grievous damage and hardship of her the said *Ann*, and against the law and custom of this kingdom of *England*: and this she is ready to verify: whereupon she prays judgment, and that the aforesaid *Luke* may be barred from having every execution whatsoever of and upon the recovery aforesaid to be levied of the goods and chattels which were of

The plaintiff was never summoned.

Gravamen.

Plaintiff prays judgment.

and restitution.

of the aforesaid *Robert* at the time of his death, and that she the said *Ann* may be restored to all things which she hath lost by occasion of the adjudication of execution aforesaid &c. and that the aforesaid *Luke* may come here in court to answer of and concerning the premisses, &c. But because the court of the lord the king now here before the king himself doth not know whether the allegations of the aforesaid *Ann* in this behalf are true or not, therefore the sheriff of *Northumberland* is commanded that he cause the aforesaid *Luke* to come before the lord the king from the day of *Easter* in 15 days wheresoever, &c. to answer of and concerning the premisses, and further to do and receive that which the court of the said lord the king now here before the king himself shall consider in this behalf. The same day is given to the aforesaid *Ann*, &c. at which day before the lord the king at *Westminster* cometh the aforesaid *Ann* by her attorney aforesaid, and the aforesaid *Luke* at the same day, being solemnly required, likewise cometh by *Henry Dodd* his attorney, and saith that the matter in the writ and declaration aforesaid contained is not sufficient in law to compel the aforesaid *Luke* to answer to the same, or to retard the having his execution of and upon the judgment aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert Lampton* at the time of his death, to which he the said *Luke* hath no necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient writ and declaration in this behalf, he the said *Luke* prays judgment of the said writ and declaration, and that the said writ and declaration may be quashed, &c.

Venire awarded to summon the plaintiff in the *Scire facias*,

who appears and demurs.

Cres. Levinz.

Joinder in demurrer.

And the aforesaid *Ann* saith that the writ and declaration aforesaid ought not to be quashed, because she saith that the said writ and declaration and the matters in them contained are good and sufficient in l[illegible] to bar the aforesaid *Luke* from having his execution of and upon the judgment aforesaid against her the said *Ann* to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, which said writ and declaration and the matters in them contained she the said *Ann* is ready to verify and prove as the court, &c. And because the aforesaid *Luke* doth not answer to the declaration aforesaid, nor hath hitherto in any manner denied it, she the said *Ann*, as before, prays judgment, and that the aforesaid *Luke* may

may be barred from having every execution whatsoever of and upon the recovery aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, &c. and that she may be restored to all things which she hath lost by occasion of the adjudication of execution aforesaid, &c. But because the court of the lord the king here is not yet advised of giving their judgment of and concerning the premisses, day thereupon is given to the parties aforesaid before the lord the king, from the day of the Holy *Trinity* in three weeks wheresoever, &c. for hearing their judgment of and concerning the premisses, for that the court of the said lord the king here thereof are not, &c. At which day before the lord the king at *Westminster* the parties aforesaid come by their attornies aforesaid, whereupon all and singular the premisses being seen and fully understood by the court of the lord the king now here, and mature deliberation being had thereupon, for that because it seems to the court of the said lord the king now here that the writ and declaration aforesaid and the matter in them contained are good and sufficient in law to bar the aforesaid *Luke* from having his execution of and upon the judgment aforesaid against the aforesaid *Ann*, to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, therefore it is considered that the aforesaid *Luke* is barred from having every execution whatsoever of and upon the recovery aforesaid to be levied of the goods and chattels which were of the aforesaid *Robert* at the time of his death, &c. and that she the said *Ann* is restored to all things which she hath lost by occasion of the adjudication of execution aforesaid, &c.

Curia advisare vult.

Judgment for the plaintiff,

[illegible]d restitution [illegible]warded.

Trinity

Trinity *Term*, 9 W. 3. Roll 493.

Bellasis one, &c. *against* Hester. 1 Ld. Raym. 280.

Cooke.

Attachment of privilege for a clerk of the prothonotary.

Surry, (to wit) JOHN *Hester* was attached by the lord the king's writ of privilege issuing out of the court here to answer to *Richard Bellasis* one of the clerks of *John Cooke* esq; chief prothonotary of the court of the lord the king of the bench here, according to the liberties and privileges of the same court for such prothonotaries, their clerks, and other ministers of the same bench, from time whereof the memory of man is not to the contrary used and approved in the same, of a plea of trespass upon the case, &c. And whereupon the said *Richard* in his proper person complains,

First count upon a bill of exchange against the acceptor.

That whereas on the first day of *May* in the year of our Lord 1697, and long before, as well the aforesaid *John Hester*, as one *William Greeveson*, were persons in the way of merchandizing, trading and using commerce within this realm of *England*, to wit, at *Southwark* in the said county of *Surry*, and the aforesaid *William* on the same day and year at *Southwark* aforesaid, according to the usage of merchants made his certain bill of exchange bearing date the same day and year, directed to the aforesaid *John Hester*, and thereby requested him the said *John Hester* in ten days after sight of the same bill of exchange to pay to the aforesaid *Richard*, by the name of *Richard Bellasis* esq; or his order, the sum of ten pounds, (the like sum received of master *William Wilkinson*) of which said bill of exchange the aforesaid *John Hester* afterwards, to wit, on the 7th day of *May* in the year of our Lord 1697 abovesaid at *Southwark* aforesaid had notice and sight, and then and there accepted the same according to the usage and custom of merchants, and by reason thereof he the said *John Hester* became chargeable to pay to him the said *Richard* the aforesaid ten pounds in the same bill of exchange mentioned according to the tenor and effect of the same bill; and being so chargeable, the aforesaid *John Hester* afterwards, to wit, the same day and year last abovesaid at *Southwark* aforesaid, in consideration thereof assumed upon himself, and to him the said *Richard* then and there faithfully promised that

he the said *John Hester* the said ten pounds to the said *Richard*, according to the tenor and effect of the same bill, would well and faithfully pay and content. And also whereas the aforesaid *John* on the same day and year last abovesaid was indebted to the said *Richard* in other ten pounds of lawful money of *England* for monies by the aforesaid *John Hester* for the use of him the said *Richard* before that time received, and being so indebted, the aforesaid *John Hester* afterward, to wit, the same day and year at *Southwark* aforesaid, in consideration thereof assumed upon himself, and to the said *Richard* then and there faithfully promised that he the aforesaid *John Hester* the same ten pounds last mentioned to him the said *Richard* would well and faithfully pay and content: nevertheless the aforesaid *John Hester* not at all regarding his several promises and undertakings aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *Richard* in this behalf, the aforesaid several sums of money or any part thereof to him the said *Richard* (although to this requested by him the said *Richard* on the 17th day of *May* in the year of our Lord 1697 abovesaid and often afterwards at *Southwark*) hath not paid, or in any wise satisfied, but to pay the same to him hath hitherto altogether refused and as yet doth refuse, to the damage of him the said *Richard* of 20 *l.* and thereupon he brings suit, &c. Pledges of prosecuting, *John Doe* and *Richard Roe*.

Second count upon an *assumpsit* for money received to the plaintiff's use.

And the aforesaid *John* by *Thomas Wright* his attorney comes and prays *oyer* of the writ of attachment aforesaid; and it is read to him in these words, (to wit) *William* the third by the grace of God of *England*, *Scotland*, *France* and *Ireland* king, defender of the faith, &c. To the sheriff of *Surry*, greeting: attach *John Hester* so that you may have him before our justices at *Westminster* on *Friday* next after the morrow of the Holy *Trinity* to answer to *Richard Bellasis* esq; one of the clerks of *John Cooke* esq; chief prothonotary of our court of the bench, according to the liberties and privileges of the same court for such prothonotaries, their clerks and other ministers of the same bench, from time whereof the memory of man is not to the contrary, used and approved in the same, of a plea of trespass upon the case, and have you there this writ. Witness *G. Treby* at *Westminster* the 17th day of *May* in the 9th year of our reign; which being read and heard, he the said *John* prays judgment of the writ and declaration aforesaid as to the first promise in the declaration aforesaid, because he saith that it manifestly appears by that declaration that the said writ was prosecuted before the said *Richard* had any

Plea without any defence.
Oyer of the writ.
Demands judgment of the writ and declaration as to the first promise.
As to second promise *non assumpsit*.

cause of action accrued upon that promise, and this he is ready to verify: whereupon he prays judgment of the said writ and declaration as to the said first promise, and that the said writ and declaration in that behalf may be quashed, *&c.* and as to the other promise aforesaid in the declaration aforesaid above-mentioned, he the said *John* saith that he did not assume upon himself in monner and form as the aforesaid *Richard* above hath declared against him, and of this he puts himself upon the country.

And the aforesaid *Richard* saith that the said plea of the aforesaid *John* above in form aforesaid pleaded in abatement of the writ and declaration of him the said *Richard* as to the first promise and undertaking aforesaid, and the matter in the same contained, are not sufficient in law to quash the said writ and declaration thereupon; and that the said plea of the aforesaid *John* above pleaded in bar as to the second promise and undertaking aforesaid, and the matter in the same contained, are not sufficient in law to bar him the said *Richard* from having his said action thereupon against him the said *John*; and that he the said *Richard* to those pleas in manner and form aforesaid pleaded hath no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: wherefore for want of sufficient pleas of him the said *John* in this behalf, he the said *Richard* prays judgment and his damages by reason of the premisses to be adjudged to him, *&c.*

And the aforesaid *John* as to the first promise aforesaid, since he hath above alledged sufficient matter in law to quash the writ and declaration aforesaid in that behalf, which he is ready to verify, which said matter the aforesaid *Richard* doth not deny, nor hath answered the same in any manner, but altogether refuses to admit that averment, as before prays judgment of the said writ and declaration in that behalf, and that the said writ and declaration as to the said first promise may be quashed; and as to the said second promise, since he the said *John* hath above alledged sufficient matter in law to bar him the said *Richard* from having his said action thereupon to be maintained, which he is ready to verify, which said matter the said *Richard* doth not deny, nor hath answered to the same in any manner, prays judgment, and that the said *Richard* may be barred from his said action as to the said second promise, *&c.* And because the justices here will advise themselves, *&c.*

Michaelmas

Michaelmas *Term* 2 William *and* Mary. Roll 289.

Kemp *againſt* Andrews. Cited 1 Ld. Raym. 340.

Trover by a ſurviving merchant.

London, (to wit) BE it remembered, that on *Thurſday* next after three weeks of Saint *Michael* in this ſame term before the lord the king and lady the queen at *Weſtminſter* came *Francis Kemp* merchant, by *Edward Shaller* his attorney, and brought here into the court of the ſaid lord the king and lady the queen then there his certain bill againſt *Jonathan Andrews* mariner, in cuſtody of the marſhal, &c. of a plea of treſpaſs upon the caſe; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid bill follows in theſe words, (to wit) *London*, (to wit) *Francis Kemp* merchant, complains of *Jonathan Andrews* mariner, being in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king and lady the queen, before the king and queen themſelves, for that, to wit, That whereas the ſaid *Francis* and certain other perſons *Geoffry Nightingale* and *John Penning* now deceaſed, (whom he the ſaid *Francis* had ſurvived) in the life-time of them the ſaid *Geoffry* and *John*, to wit, on the 20th day of *November* in the year of our Lord 1686, at *London* aforeſaid, to wit, in the pariſh of the bleſſed *Mary of the Arches* in the ward of *Cheape*, were poſſeſſed of the goods and chattels following, that is to ſay, of one ſhip called the *Streights Merchant* (and ſeveral other goods which are particularly ſpecified) to the value of 20,000 *l.* of lawful money of *England*, as of the proper goods and chattels of him the ſaid *Francis*, and of the aforeſaid *Geoffry* and *John* in the life-time of them the ſaid *Geoffry* and *John*, and being ſo poſſeſſed thereof, he the ſaid *Francis* and the aforeſaid *Geoffry* and *John* afterwards in the life-time of them the ſaid *Geoffry* and *John*, to wit, the ſame day and year aboveſaid at *London* aforeſaid in the pariſh and ward aforeſaid caſually loſt the goods and chattels aforeſaid out of their hands and poſſeſſion, which ſaid goods and chattels afterwards, to wit, the ſame day and year abovesaid, at *London* aforeſaid in the pariſh and ward aforeſaid came to the hands and poſſeſſion of him the ſaid *Jonathan* by finding: nevertheleſs the aforeſaid *Jonathan* well

knowing the goods and chattels aforesaid to be the goods and chattels of him the said *Francis*, and of the aforesaid *Geoffry* and *John*, and to them the *Francis*, *Geoffry* and *John* in the life-time of them the said *Geoffry* and *John* (whom he the said *Francis* hath survived) of right to belong and appertain, but contriving and fraudulently intending them the said *Francis*, *Geoffry* and *John*, in the life-time of them the said *Geoffry* and *John* (whom he the said *Francis* hath survived) craftily and subtilly to deceive and defraud, hath not delivered the goods and chattels aforesaid (although often requested) to the said *Francis* and to the aforesaid *Geoffry* and *John* in the life-time of the said *Geoffry* and *John*, or to any of them, or to him the said *Francis* after the death of them the said *Geoffry* and *John*, but afterwards, to wit, the same day and year abovesaid at *London* aforesaid in the parish and ward aforesaid converted and disposed of the goods and chattels aforesaid to the said *Jonathan*'s own proper use and benefit, to the damage of him the said *Francis Kemp* of 30,000 *l.* and thereupon he brings suit, *&c.*

Defendant pleads they were joint merchants, and so there ought to be no survivorship.

And the aforesaid *Jonathan Andrews* by *Basil Herne* his attorney comes and defends the force and injury when, *&c.* and saith that the aforesaid *Francis Kemp* ought not to have or maintain his action aforesaid against him, because he saith that the aforesaid *Francis Kemp* and the aforesaid *Geoffry Nightingale* and *John Penning* in the declaration aforesaid above named, long before the aforesaid several times in which the possession, loss, conversion and disposition of the goods and chattels aforesaid in the declaration aforesaid mentioned are supposed to be had and done, and also at the said several times in which, *&c.* were merchants, and as joint merchants, for the common profit of them the said *Francis*, *Geoffry* and *John* were possessed of the aforesaid goods and chattels in the declaration mentioned, to wit, at *London* aforesaid in the parish and ward aforesaid, and that by the law of merchants, and the law used and approved within this realm of *England*, there is not, nor ever was any right of survivorship between joint merchants. And the aforesaid *Jonathan* further saith that the aforesaid *Geoffry Nightingale* before the exhibiting of the bill aforesaid, to wit, on the 6th day of *July* now last past at *London* aforesaid in the parish and ward aforesaid made his last will and testament in writing, and then and there constituted and appointed *Ann Nightingale* and *Bridges Nightingale* executors of his same last will aforesaid; which said *Bridges Nightingale*, after the death of him the said *Geoffry Nightingale*, and before the exhibiting of the bill aforesaid, to wit, on the first day of *October* now last past, at *London* aforesaid in the parish and ward aforesaid,

That one deceased merchant made a will and an executor who proved it, and is living.

proved

proved the same last will of him the said *Geoffry Nightingale* in due form of law, and took upon himself the burthen of the execution thereof, and as yet is living, and in full life. And the aforesaid *Jonathan* farther saith that the aforesaid *John Penning*, before the exhibiting of the bill aforesaid, to wit, the day, year, and at the place aforesaid made his last will and testament in writing, and then and there constituted and appointed one *Elizabeth Penning* executrix of his same last will; which said *Elizabeth* after the death of him the said *John Penning*, and before the exhibiting of the bill aforesaid, to wit, the day and year, and at the place aforesaid proved the same last will of him the said *John Penning* in due form of law, and hath taken upon herself the burthen of the execution thereof, and as yet is there living, and in full life, and this he is ready to verify; whereupon he prays judgment if the aforesaid *Francis* ought to have or maintain his action aforesaid against him, &c.

And that the other deceased merchant made a will and an executor who proved it, and is living.

Tremaine,
W. Thompson.

The plaintiff demurs, and shews for cause that the plea amounts to the general issue, does not answer the declaration, is uncertain, double, and wants form.

The defendant joins in demurrer.

Hilary *Term in the 8th Year of King* William *the Third.* Roll 1667.

Thorpe *against* Thorpe. 1 Ld. Raym. 662.

Yorkshire, (to wit) RICHARD *Thorpe* late of *Hopton* in the county aforesaid, gent. was attached to answer to *John Thorpe* of a plea of trespass upon the case, &c. and whereupon the said *John* by *Henry Hemmingway* his attorney complains, that whereas the aforesaid *Richard*, on the 19th day of *January* in the year of our Lord 1693, had and held of and from the aforesaid *John* two closes of customary land called *Boolefalls* with the appurtenances in *Hipperholme* in the county aforesaid by way of mortgage: and also whereas afterwards, to wit, the same day and year at the castle of *York* a certain discourse was had and moved between the aforesaid *Richard* and him the said *John*, of and concerning the mortgage aforesaid, and the releasing the equity of redemption of him the said *John* of and in the tenements aforesaid with the appurtenances, and also of and concerning certain

Case upon mutual promises upon an agreement, whereby plaintiff agreed to release his equity of redemption in two closes, in consideration of which defendant promised to pay plaintiff 7*l*.

certain sums of money which were then owing and payable by him the said *John* to the aforesaid *Richard*; and upon that discourse he the said *John* then and there agreed to make to the use of the aforesaid *Richard* and for his sole benefit, a good and sufficient release of the equity of redemption of him the said *John*, of and in the tenements aforesaid with the appurtenances, in consideration whereof the aforesaid *Richard* did then and there agree to give and pay to him the said *John* seven pounds over and besides the monies which were then due, of and upon the mortgage aforesaid, and to deliver to him the said *John* one sack of malt, and also to acquit him of and from all sums of money which he the said *John* then owed to the aforesaid *Richard*, as before is said: and he the said *Richard* afterwards, to wit, the same day and year at the castle of *York* aforesaid, in consideration of the agreement aforesaid, and also in consideration that the aforesaid *John* had then and there assumed upon himself, and had faithfully promised to the aforesaid *Richard* to perform all things in the agreement aforesaid contained on the part of him the said *John* to be performed, assumed upon himself, and to him the said *John* then and there faithfully promised that he the aforesaid *Richard* would well and truly fulfil the agreement aforesaid in all things on his part to be performed.

General averment of performance of all things on the plaintiff's part.

And the said *John* in fact saith that he, after the making of the agreement aforesaid, and before the day of obtaining of the original writ of him the said *John*, to wit, on the 29th day of *July* in the year of our Lord 1694, did perform all things in that agreement contained on the part of him the said *John* to be performed, to wit, at the castle of *York* aforesaid: and although the aforesaid *Richard* in pursuance of the agreement aforesaid did give and pay to him the said *John* 25 *s.* parcel of the aforesaid 7 *l.* Nevertheless the aforesaid *Richard* not at all regarding his promise and undertaking aforesaid in form aforesaid made, as to 5 *l.* and 15 *s.* the residue of the aforesaid 7 *l.* but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *John* in this behalf, hath not given or paid to him the said *John* the aforesaid 5 *l.* and 15 *s.* or any part thereof, nor hath delivered to him the said *John* the aforesaid sack of malt, nor hath acquitted him the said *John* of the monies aforesaid to the aforesaid *Richard* owing, as before is said, according to the form and effect of the agreement aforesaid, (although to do this the aforesaid *Richard* afterwards, to wit, on the 10th day of *August* in the year of our Lord last abovesaid, and often afterward, at the castle of *York* aforesaid was requested by him the said *John*), but so to do hath hitherto altogether

refused

refused and as yet doth refuse. And also whereas the aforesaid *Richard* afterwards, to wit, on the 29th day of *September* in the year of our Lord last abovesaid at the castle of *York* aforesaid was indebted to him the said *John* in 5 *l.* and 15 *s.* of lawful money of *England* for the release of the equity of redemption of him the said *John* of and in certain customary lands with the appurtenances in *Hipperholme* in the county aforesaid, by him the said *John* to the aforesaid *Richard* and to his use and benefit, at the special instance and request of him the said *Richard* before granted and made, and being thereupon so indebted, the aforesaid *Richard* afterwards, to wit, the day and year last abovesaid, at the castle of *York* aforesaid, in consideration thereof assumed upon himself, and to him the said *John* then and there faithfully promised that he the aforesaid *Richard* the aforesaid 5 *l.* and 15 *s.* last mentioned to him the said *John*, when he should be thereunto afterwards requested, would well and faithfully satisfy: nevertheless the aforesaid *Richard* not at all regarding his aforesaid promise and undertaking last mentioned, but contriving and fraudulently intending craftily and subtilly to deceive and defraud him the said *John* in this behalf, hath not yet paid, or in any wise satisfied the aforesaid 5 *l.* and 15 *s.* last mentioned, or any part thereof, to him the said *John*, (although to do this the aforesaid *Richard* afterwards, to wit, on the 11th day of *November* in the year of our Lord last abovesaid, and often afterwards, at the castle of *York* aforesaid hath been requested by him the said *John*) but hath hitherto altogether refused to pay the same to him, and as yet doth refuse, to the damage of him the said *John* of 20 *l.* and thereupon he brings suit, &c.

Second count on an *assumpsit* for 5 *l.* 15 *s.* for a release of his equity of redemption.

And the aforesaid *Richard* by *Joseph Green* his attorney comes and defends the force and injury when, &c. And as to the first promise aforesaid, he the said *Richard* saith that the aforesaid *John Thorpe* ought not to have his action aforesaid thereupon against him, because he saith that after the making of that promise, to wit, on the 29th day of *July* in the year of our Lord 1694, at the castle of *York* aforesaid by a certain indenture then and there made between the aforesaid *Richard Thorpe* and one *Thomas Heald*, by the names of *Richard Thorpe* of *Hopton* in the county of *York*, gent. and *Thomas Heald* of *Hipperholme* in the said county of *York* gent. of the one part, and the aforesaid *John* by the name of *John Thorpe* late of *Sinderhills* in the township of *Hipperholme* aforesaid gent. of the other part, the counterpart whereof sealed with the seal of him the said *John*, he the said *Richard* brings here into court, bearing date the day and

Bar by the same release, by which the plaintiff released his equity of redemption, &c. as to the first count.

and year last abovesaid, the said *John* did remise, release and for ever quit claim to the said *Richard Thorpe* and *Thomas Heald*, their executors, administrators and assigns, all and all manner of actions, suits, causes and accounts, debts, duties, reckonings, sum and sums of money, and demands whatsoever, which he the said *John Thorpe* ever had, or which he, his heirs, executors, administrators and assigns, or any of them, in time then to come could or might have to, for or against the said *Richard Thorpe* and *Thomas Heald*, their executors, administrators or assigns, for or by reason of any matter, cause or thing whatsoever, as by the indenture aforesaid it is more fully manifest and appeareth, and this he is ready to verify: whereupon he prays judgment if the aforesaid *John Thorpe* ought to have his action aforesaid thereupon against him, &c. And as to the second promise aforesaid in the declaration aforesaid above mentioned, he the said *Richard* saith that the aforesaid *John Thorpe* ought not to have his action aforesaid thereupon against him, because he saith that *that* promise was made before the 29th day of *July* in the year of our Lord 1694 abovesaid, to wit, on the first day of *July* in the same year, to wit, at the castle of *York* aforesaid. And the said *Richard* further saith that on the aforesaid 29th day of *July* in the year of our Lord 1694 abovesaid at the castle of *York* aforesaid, by the aforesaid indenture then and there made between the aforesaid *Richard Thorpe* and the aforesaid *Thomas Heald*, by the names of *Richard Thorpe* of *Hopton* in the county of *York* gent. and *Thomas Heald* of *Hipperholme* in the said county of *York* of the one part, and the aforesaid *John* by the name of *John Thorpe* late of *Sinderhills* in the township of *Hipperholme* aforesaid gent. of the other part, (the counterpart whereof sealed with the seal of him the said *John* is brought here in court as before is set forth, bearing date the day and year last abovesaid) the said *John* did remise, release and for ever quit-claim to the said *Richard Thorpe* and *Thomas Heald*, their executors, administrators and assigns, all and all manner of actions, suits, causes and accounts, debts, duties, reckonings, sum and sums of money, and demands whatsoever, which he the said *John Thorpe* ever had, or which he, his heirs, executors, administrators and assigns, or any of them, in any time then to come could or might have to, for or against the said *Richard Thorpe* and *Thomas Heald*, their executors, administrators or assigns, for or by reason of any matter, cause or thing whatsoever, as by the indenture aforesaid more fully appears, without this, that after the making of the indenture aforesaid he the said *Richard* assumed upon himself, as by the same promise is above supposed,

A like plea in bar to the 2d count.

Traverses that the promise was before the release.

supposed, and this he is ready to verify: whereupon he prays judgment if the aforesaid *John Thorpe* ought to have his action aforesaid thereupon against him, *&c.*

And the aforesaid *John* prays *oyer* of the indenture aforesaid, and it is read to him in these words, (to wit) This indenture made the 29th day of *July* in the sixth year of the reign of our sovereign lord and lady *William* and *Mary* by the grace of God of *England*, *Scotland*, *France* and *Ireland* king and queen, defenders of the faith, *&c. annoq. Dom.* 1694, between *Richard Thorpe* of *Hopton* in the county of *York* gent. and *Thomas Heald* of *Hipperholme* in the said county of *York* gent. of the one part, and *John Thorpe* late of *Sinderhills* in the township of *Hipperholme* aforesaid gent. of the other part: whereas the said *John Thorpe* hath formerly by certain deeds, writings and surrenders conveyed and surrendered by way of mortgage, and given up with a straw into the hands of the lord of the manor of *Wakefield*, according to the custom thereof, two closes of land, meadow and pasture with the appurtenances lying and being within the graveship of *Hipperholme* within the said manor of *Wakefield*, called and known by the name of *Boolefalls*, now in the tenure or occupation of *J. R.* and *S. A.* or their assigns, being of the yearly rent to the lord of the said manor of 8 *d.* and compounded for the use and behoof of *Richard Thorpe* and of his heirs and assigns for ever: and whereas likewise the said *John Thorpe* hath also formerly by certain deeds, writings and surrenders conveyed and surrendered by way of mortgage all that his capital messuage or tenement called or known by the name of *Sinderhills* with the appurtenances situate and being in *Hipperholme* aforesaid, and all houses, edifices, barns, buildings, stables, orchards, gardens, liberties, easements whatsoever to the same belonging or of right appertaining, and one croft lying on the backside of the said messuage, and all those three closes of land being in *Hipperholme* aforesaid, called or commonly known by the names of the *Field before the Door*, the *Farther Ing* and *Chapel Ing*, and all those five closes of land, meadow and pasture with the appurtenances lying and being in *N.* in the said county of *York*, called or commonly known by the several names of the *Overclose*, *&c.* now in the tenure or occupation of *S. A.* aforesaid or his assigns, to the use of *Thomas Heald* and his assigns for ever: now this indenture witnesseth, that the said *John Thorpe* hath released to the aforesaid *Richard Thorpe* and *Thomas Heald* and their heirs all provisoes and conditions in the said deeds, writings and surrenders mentioned and contained, as in and by the said deeds, writings and surrenders, relation being thereunto had,

Replication. *Oyer* of the release.

had, more fully and at large it doth appear, and alſo doth now by theſe preſents for ever acquit and releaſe all his eſtate and right both in law and equity of redemption, title, claim and demand whatſoever to the ſaid lands, meſſuage, and all and ſingular the premiſſes and every of them, and that he the ſaid *John Thorpe* doth by theſe preſents remiſe, releaſe and for ever quit-claim unto *Richard Thorpe* and *Thomas Heald* aforeſaid, their heirs, executors, adminiſtrators and aſſigns, all and all manner of actions, ſuits, cauſes and accounts, debts, duties, reckonings, ſum and ſums of money and demands whatſoever which he the ſaid *John Thorpe* ever had, or which his heirs, executors, adminiſtrators and aſſigns, or any of them, in time to come can or may have to, for or againſt the ſaid *Richard Thorpe* and *Thomas Heald*, their executors, adminiſtrators or aſſigns, for or by reaſon of any matter, cauſe or thing whatſoever. In witneſs, &c. Upon which the plaintiff demurs, and the defendant joins in demurrer.

Judgment was given in the *C. B.* for the plaintiff, and affirmed in *B. R.*

Entered of Hilary *Term in the 2d Year of Queen* Ann. B. R. Roll 261.

Parkins *againſt* Wilſon. 2 Ld. Raym. 1256.

Middleſex, (to wit) BE it remembered that heretofore, to wit, on *Monday* next after fifteen days of Saint *Martin* in the term of Saint *Michael* laſt paſt before the lady the queen at *Weſtminſter* came *Thomas Parkins* by *Francis Hutchinſon* his attorney, and brought here into the court of the ſaid lady the queen then there his certain bill againſt *Matthew Wilſon,* in the cuſtody of the marſhal, &c. of a plea of debt; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe,* which ſaid bill follows in theſe words, (to wit) *Middleſex,* (to wit) *Thomas Parkins* complains of *Matthew Wilſon,* being in the cuſtody of the marſhal of the *Marſhalſea* of the lady the queen before the queen herſelf, of a plea that he render to him 25 *l.* and 15 *s.* of lawful money of *England,* which he owes to him and unjuſtly detains, for that, to wit, that whereas the aforeſaid *Thomas Parkins* heretofore, to wit, in this preſent term in the court of the lady the queen before the queen herſelf at *Weſtminſter* (the ſame court being then at *Weſtminſter* in the county of *Middleſex*) by

Debt in the king's bench on a recognizance of bail.

by bill without the writ of the said lady the queen, and by judgment of the same court recovered against one *Jonathan Woollaston* gent. 25*l.* and 15*s.* for his damages which he had sustained as well by occasion of the not-performing of certain promises and undertakings to him the said *Thomas* by the aforesaid *Jonathan* lately made, as for his costs and charges by him laid out about his suit in that behalf whereof he the said *Jonathan* is convicted, as by the record thereof remaining in the court of the said lady the queen before the queen herself at *Westminster* aforesaid more fully appears: and whereas the aforesaid *Matthew Wilson* and one *B. C.* by the names of *Matthew Wilson* of the parish of Saint *Paul Covent Garden* cook, and *B. C.* of the parish of Saint *Clement Danes* gent. heretofore, to wit, in the term of *Easter* last past in the same court of the said lady the queen before the queen herself at *Westminster* personally came and became pledges and bail, and each of them became pledge and bail for the aforesaid *Jonathan*, that if it should happen he the said *Jonathan* should be convicted in the plea aforesaid, then they the said *Matthew* and *B.* granted, and each of them for himself did grant all such damages, costs and charges which should be adjudged to the aforesaid *Thomas Parkins* in that behalf, to be made of their and each of their lands and chattels, and to be levied to the use of the aforesaid *Thomas Parkins*, if it should happen that the said *Jonathan* should not pay the said damages, nor render himself to the prison of the marshal of the *Marshalsea* of the said lady the queen before the queen herself upon that occasion: and he the said *Thomas* saith that the aforesaid *Jonathan* hath not yet paid those damages to the aforesaid *Thomas*, nor hath rendered himself to the prison of the marshal of the *Marshalsea* of the said lady the queen before the queen herself on that occasion, by which an action hath accrued to him the said *Thomas* to require and have of the aforesaid *Matthew* the aforesaid 25*l.* and 15*s.* Nevertheless the aforesaid *Matthew* although often requested, &c. hath not yet paid the aforesaid 25*l.* and 15*s.* to him the said *Thomas*, but to pay the same to him hath hitherto altogether denied, and as yet doth deny, to the damage of him the said *Thomas* of 30*l.* and thereupon he brings suit, &c. with this, that he the said *Thomas* will verify that the aforesaid *Matthew Wilson* one of the pledges and bail for the aforesaid *Jonathan Wilson* above mentioned to have so become, and the aforesaid *Matthew Wilson* the now defendant, are one and the same person, and not another or different; and that the aforesaid *Thomas* in the record aforesaid mentioned, and the aforesaid *Thomas* the now plaintiff, are one and the same person, and not

Averment of identity.

not another or different; and that the judgment aforesaid as yet remains in its full strength, force and effect not reversed, annulled or satisfied.

N. The defendant *Wilson* pleaded in bar, that after the giving the said judgment against the said *Jonathan Woollaston*, and before the day of the exhibiting the plaintiff's bill, no *capias ad satisfaciendum* upon the said judgment against the said *Woollaston* was prosecuted and returned in the queen's bench, &c.

The plaintiff *Parkins* replied, that after the giving the said judgment against the said *Woollaston*, and before the exhibiting this bill, *viz.* on the 10th of *November* in the 2d year of the queen, the said plaintiff did sue out of the queen's bench a *capias ad satisfaciendum* against the said *Woollaston*, returnable on *Monday* next after eight days of Saint *Martin*, &c. At which day the sheriff returned that the said *Jonathan Woollaston* was not found in his bailiwick, as by the writ of *capias ad satisfaciendum*, and the aforesaid return of that writ in the said queen's bench at *Westminster* remaining of record more fully appears; and this, &c.

The defendant rejoined in this manner:

Rejoinder that the defendant in the principal action sued error on the judgment before the *ca. sa.* was sued out, returned and filed.

And the aforesaid *Matthew Wilson* saith that after the giving of the judgment aforesaid in the declaration aforesaid specified, and before the aforesaid writ of *capias ad satisfaciendum*, of and upon the judgment aforesaid against the aforesaid *Jonathan Wilson* was prosecuted, returned and affiled in the court of the said lady the now queen before the queen herself at *Westminster* aforesaid, to wit, on the 20th day of *November* in the second year of the reign of the said lady the now queen, he the said *Jonathan* for the reversing of the judgment aforesaid prosecuted forth of the court of chancery of the said lady the queen, then being at *Westminster* aforesaid in the county of *Middlesex*, a certain writ of the said lady the queen for correcting the error in the record and process, and also in the giving of that judgment, directed to the said lady the queen's beloved and faithful *John Holt* knt. then, and as yet, chief justice of her the said lady the queen assigned to hold pleas before the queen herself; by which said writ the said lady the queen commanded the aforesaid chief justice that if judgment was thereupon given, then the record and process of the plaint aforesaid, with all things touching the same, he should cause to come before her justices of the common bench and her barons of the exchequer of

of the degree of the coif in the exchequer chamber of the ſaid lady the queen at *Weſtminſter* on *Saturday*, to wit, the 27th day of the then inſtant month of *November*, that the ſaid juſtices of the common bench and barons of the exchequer having ſeen and examined the record and proceſs aforeſaid, might further do thereupon in that behalf that which of right and according to the form of the ſtatute in ſuch caſe made and provided ſhould be meet to be done; by virtue of which ſaid writ for correcting the error, he the ſaid chief juſtice afterwards, to wit, on the ſame 27th day of *November* aforeſaid tranſmitted the tranſcript of the record and proceſs of the plaint and judgment aforeſaid with all things touching them, before the aforeſaid juſtices of the ſaid lady the queen of the common bench and barons of the exchequer of the degree of the coif in the exchequer chamber at *Weſtminſter* aforeſaid, where the ſame as yet remains, and that the aforeſaid writ for correcting the error in the ſame exchequer chamber as yet is pending undetermined, and the judgment aforeſaid in the ſame court of the ſaid lady the now queen before the queen herſelf as yet remains in its full ſtrength not annulled, as by the record thereof in the ſame court of the ſaid lady the now queen before the queen herſelf is more fully manifeſt and appears: and he the ſaid *Matthew* further ſays, that after the proſecuting of the aforeſaid writ for correcting the error, and before the return thereof, and alſo before the aforeſaid writ of *capais ad ſatiſfaciendum* of or upon the judgment aforeſaid againſt the aforeſaid *Jonathan Wilſon* was proſecuted, returned and affiled in the court of the ſaid lady the now queen before the queen herſelf at *Weſtminſter* aforeſaid, to wit, on the 22d day of *November* in the ſecond year of the reign of the ſaid lady the now queen, he the ſaid *Matthew Wilſon* and *Booth Chadderton* and *Richard Woollaſton*, by the names of *Booth Chadderton* of *Stanhope-Street* in the pariſh of Saint *Clement Danes* in the county of *Middleſex*, gent. *Matthew Wilſon* of *York-Street* in the pariſh of Saint *Paul Covent Garden* in the county aforeſaid cook, and *Richard Woollaſton* of *Wormley* in the county of *Hertford* eſq; in their proper perſons came into the aforeſaid court of the ſaid lady the now queen before the queen herſelf at *Weſtminſter*, and according to the form of the ſtatute for avoiding of unneceſſary delays of executions thereupon made and provided, acknowledged themſelves to owe and each of them acknowledged himſelf to owe to the aforeſaid *Thomas Parkins* 51 *l.* and 10 *s.* of lawful money of *England*, to be paid to him the ſaid *Thomas*, his executors or aſſigns, and unleſs they ſhould ſo do, they the ſaid *Booth*, *Matthew* and *Richard* granted, and each of them

them for himself did grant the aforesaid 51 *l.* and 10 *s.* to be made and levied of their and each of their lands and chattels to the use of the said *Thomas*; upon condition nevertheless, that if the aforesaid *Jonathan* should prosecute the aforesaid writ of error with effect, and if the judgment aforesaid should be affirmed against the aforesaid *Jonathan*, then if he the said *Jonathan* should satisfy and pay to the said *Thomas* the damages aforesaid, and also all such costs and damages as should be adjudged to the said *Thomas* by occasion of the delay of his execution upon the judgment aforesaid by pretext of the prosecuting of the said writ of error, then that recognizance should be void and of no effect, as by the record thereof in the aforesaid court of the said lady the now queen before the queen herself at *Westminster* remaining more fully appears, and this the said *Matthew* is ready to verify: whereupon as before he prays judgment, and that the aforesaid *Thomas Parkins* may be barred from having his aforesaid action thereof against the said *Matthew*, &c.

General demurrer, and joinder in demurrer.

N. This rejoinder is clearly a departure from the plea, for it is new matter, which does not agree with, or enforce the matter of the plea; for the plea is, that there was no *capias ad satisfaciendum*, and this rejoinder says that there was a *capias ad satisfaciendum* but it was superseded, and there is a difference between no *capias*, and a *capias* superseded; for the superseding does not make it null, or no *capias*, but only suspends the fruit or effect of it, and one must distinguish between the writ itself, and the effect of it.

Therefore the matter of this rejoinder ought to have been pleaded in the plea in bar.

Easter *Term*, 5 Ann. B. R. 2 Ld. Raym. 1262.

Turner *against* Beal.

Indeb. assumpsit.

Declaration. UPON an *indebitatus assumpsit* for 100 *l.* for goods sold and delivered by the plaintiff to the defendant *June* 1, 1705, upon a *quantum meruit*, and an *insimul computasset*.

Plea as to all but 37 *l.* *non assumpsit.*

To the last promises, and to the whole sum of 100 *l.* in the first promise, except 37 *l.* part thereof, the defendant pleaded *non assumpsit*, upon which issue was joined. And as to

to the said 37 l. part of the said sum of 100 l. in the said first promise and undertaking mentioned, he the said *Abraham* (the defendant) saith that he cannot deny but that he, before the 8th day of *November* in the year of our Lord 1703, was indebted to the aforesaid *John Turner* in the said 37 l. for the sheep and lambs in the said declaration mentioned, to him the said *Abraham* by the aforesaid *John Turner* before that time sold and delivered, and before the same 8th day of *November* in consideration thereof assumed upon himself and promised to pay to the said *John Turner* the said 37 l. and so he cannot deny but that the aforesaid *John Turner* ought to recover his damages by occasion of the non-payment of the said 37 l. against him the said *Abraham*: nevertheless he the said *Abraham* prays that his person, and also his wearing apparel, bedding, and the necessary tools for his trade, which do not exceed ten pounds in value, may be always discharged and free of and from every execution by the aforesaid *John* in this behalf to be had, according to the form of the statute made in the parliament of the lady the now queen holden by prorogation at *Westminster* in the county of *Middlesex* on the 9th day of *November* in the second year of her reign, intitled, an act for the discharge out of prison such insolvent debtors as shall serve or procure a person to serve in her majesty's fleet or army; because he says that he the said *Abraham* on the aforesaid 8th day of *November* in the year of our Lord 1703 in the same statute mentioned, and also before and afterward was a prisoner actually in the prison and gaol of the lady the queen of the *Marshalsea* of her the said lady the queen before the queen herself, under the custody of *Francis Southard* esq; keeper of that prison, for and concerning an action for debt at the suit of *Edmund Warnford*, (the said prison being then and as yet at *Southwark* in the county of *Surry*) and that, at the general quarter session of the peace of the said lady the queen, holden at *Guilford* in and for the same county of *Surry* on *Thursday* the 13th day of *July* in the third year of the reign of the said lady the now queen, before *John Fulham* and *John Lade* esquires and others their fellows justices of her the said lady the queen, assigned to keep the peace in the said county of *Surry*, he the said *Abraham* then being still a prisoner in form aforesaid, by the same justices of peace in that open court, by virtue and according to the form of the statute aforesaid, was in due manner released and discharged from his imprisonment aforesaid, without this, that he the said *Abraham* upon or after the aforesaid 8th day of *November* in the year of our Lord 1703 aforesaid assumed upon himself as to the said 37 l. in manner and form as the aforesaid *John* above thereupon supposes, and this he is ready

And as to 37 l. confesses the action.

But in stay of execution against his person, &c. he pleads the stat. 2 Ann. for insolvent debtors.

That he was a prisoner on and before the 8th of November 1703 for debt.

That at the general quarter-sessions for Surry he was discharged out of prison.

Traverse of the time of the debt.

ready to verify: whereupon he prays judgment if the aforesaid *John Turner* ought to have any execution in this behalf to charge the person of him the said *Abraham*, or his wearing apparel, bedding, or the necessary tools aforesaid, *&c.* And the aforesaid *Abraham* brings here into court the duplicate of the order of that discharge signed and sealed with the hands and seals of the said two justices of the peace, which testify the premisses, the date whereof is in the said general quarter session of the peace at *Guilford* aforesaid the said 13th day of *July* in the third year abovesaid, *&c.*

Profert in curiam of the duplicate of the order of the discharge.

L. Agar.

Demurrer.

And the abovesaid *John Turner* saith that he, by any thing by the aforesaid *Abraham* above in pleading alledged, ought not to be barred from having his execution for his damages to be recovered in this behalf by occasion of the non-payment of the aforesaid 37 *l.* against the person of the aforesaid *Abraham*, and all his goods and chattels; because he saith, that the plea aforesaid by the aforesaid *Abraham* above pleaded and the matter therein contained are not sufficient in law to bar him the said *John* from having his execution thereof against the person of the said *Abraham*, and all his goods and chattels, to which he the said *John* hath no necessity, nor is he bound by the law of the land in any manner to answer, and this he is ready to verify: whereupon for want of a sufficient answer in this behalf, he the said *John* prays judgment and his damages by occasion of the premisses to be adjudged to him to be made and levied by execution against the person of the aforesaid *Abraham*, and all his goods and chattels, at the free will and pleasure of him the said *John*, *&c.*

T. Pengelly.

Joinder in demurrer.

And the aforesaid *Abraham* saith that the plea aforesaid by him the said *Abraham* in manner and form aforesaid above pleaded and the matter therein contained, are good and sufficient in law to bar the aforesaid *John* from having his execution thereof against the person of him the said *Abraham*, and his wearing apparel, bedding, and the necessary tools for his trade, which do not exceed 10 *l.* in value; which said plea and the matter therein contained, he the said *Abraham* is ready to verify and prove to the court, *&c.* And because the aforesaid *John* doth not answer to that plea, nor hath hitherto in any wise denied it, he the said *Abraham*, as before, prays judgment, and that the aforesaid *John Turner* may be barred from having every execution whatsoever in

in this behalf to charge the person of him the said *Abraham* or his wearing apparel, bedding or tools aforesaid, &c.

Nota; The plea was held to be bad, even upon a general demurrer, because the necessary facts were not averred therein to intitle the justices of peace to a jurisdiction: for the defendant ought to have expresly and particularly shewn to the court in his plea that he petitioned, and that the person at whose suit he was detained in prison was summoned, that he inlisted himself for a soldier in the queen's service, &c. as the statute has directed: and for this defect, there was judgment for the plaintiff.

Easter *Term*, 5 Ann. B. R.

The Queen *against* Baines. 2 Ld. Raym. 1265.

Mandamus to restore Mr. *Baines* to the office of clerk of the peace of the county of *Westmorland*.

ANNE by the grace of God of *England*, *Scotland*, *France* and *Ireland* queen, defender of the faith, &c. To the conservators of our peace, and to our justices assigned to keep the peace in and for our county of *Westmorland*, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in our said county, and to every of them greeting: whereas *Richard Baines* gent. was duly named and appointed clerk of the peace of the county aforesaid, by the most noble *Thomas* lord *Wharton*, late keeper of the rolls of our peace in our county of *Westmorland* aforesaid: which said *Thomas* lord *Wharton* then had full power and authority (as *custos rotulorum* of the same county) to name and appoint him the said *Richard Baines* clerk of the peace of the same county, to have and to hold the office of clerk of the peace of the county aforesaid so long as he should well demean himself: and he the said *Richard* was in due manner and rightly admitted to the aforesaid office and the exercise thereof, by virtue whereof the said *Richard* was and is justly intitled to the exercise of the office aforesaid and to take the profits thereof: nevertheless you the aforesaid justices have unjustly removed him the said *Richard* from the execution of the office aforesaid, and do refuse him to execute the said office, to the grievous damage of him the said *Richard*, as we are informed by his complaint: therefore we, willing that quick and speedy justice be done in this behalf to him the said *Richard Baines*, as it is just, command you, firmly injoining that immediately after the

receipt of this writ, you restore him the said *Richard Baines* to the execution of the aforesaid office of clerk of the peace of the county aforesaid, and permit him to execute that office and to take the profits thereof, or that you shew cause to us to the contrary, lest complaint come to us again by your defaults; and in what manner this our command shall be executed that you make to appear to us at *Westminster* on *Saturday* next after eight days of Saint *Hilary*, then sending back to us this writ. Witness *J. Holt* knt. at *Westminster* the 24th day of *November* in the first year of our reign.

By rule of court.

To which writ the justices of peace made this following return:

The return.

We *Christopher Musgrave* knt. and bart. *Christopher Philipson* knt. *&c.* the keepers of the peace and justices in the writ to this schedule annexed within written, do most humbly certify to the most serene lady the now queen in the court of her the said queen before the queen herself at *Westminster*, That *Richard Baines* in the same writ named, being clerk of the peace for the county of *Westmorland* aforesaid, by pretext thereof at the general quarter session of the peace of the said lady the queen holden at *Appleby* in and for the county of *Westmorland* aforesaid on the 13th day of *April* in the first year of the reign of the said lady the queen, before the then justices of the said lady the queen assigned to keep the peace in and for that county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the county of *Westmorland* aforesaid during all that session, and also at the general quarter session of the peace of the said lady the queen holden at *Kirkby* in *Kendall*, in and for the county of *Westmorland* aforesaid on the 14th day of *July* in the first year abovesaid, before *Christopher Musgrave* knt. and bart. *Richard Sandford* bart. *Christopher Philipson* knt. *James Grahme*, *William Fleming*, *Henry Grahme*, *Edward Wilson* the elder, *Richard Brathwaite*, *James Bird*, and *Thomas Dawes* esquires, and *John Archer* doctor in physick, then justices of the said lady the queen assigned to keep the peace in and for the same county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county, exercised and executed the aforesaid office of clerk of the peace for that county; and that afterwards and before the coming of the writ aforesaid, to wit, at the aforesaid general quarter session of the peace above last mentioned, a certain complaint and charge in writing was exhibited to the justices of peace in that

that session complaining and accusing the said *Richard Baines* of divers ill behaviours committed in the execution of the aforesaid office of clerk of the peace for the same county, for that at the aforesaid then last quarter session of the peace he the said *Richard Baines* did force one *John Scott* of *Woodside* labourer, to pay nine shillings of lawful money of *England* more than his just fees; and also that the aforesaid *Richard Baines* on the 10th day of *April* in the first year of the reign of the said lady the now queen abovesaid did exact from one prisoner *Langhorne*, and compel him to pay and expend the sum of eight shillings and six pence of the like money of *England*, for a certain process called a *subpœna*, to summon four witnesses to give evidence on the behalf of him the said prisoner in the sessions, which said process called a *subpœna* contained twelve lines and no more; and that at the same general quarter session of the peace holden the same 14th day of *July* in the first year abovesaid, upon full examination and due proof of the truth of the matters alledged against the said *Richard Baines* (as before is said) made and had openly in the same session in the presence of the aforesaid *Richard Baines* (who being by order of the same session duly summoned to answer to those matters as aforesaid laid to his charge, appeared at the same session in his proper person and defended himself by counsel learned in the law), the aforesaid *Richard Baines* was thereof convicted, therefore it was considered by the court of that general quarter session, that the aforesaid *Richard Baines* should be removed and discharged from the office of clerk of the peace of the aforesaid county of *Westmorland*; and the same *Richard Baines* thereupon before the coming of the writ aforesaid in the open and full court of that session, was removed and discharged by that court from the said office: and the aforesaid now keepers of the peace and justices in the writ aforesaid within written further certify, that the aforesaid *Richard Baines* was not named or appointed to be clerk of the peace for the county of *Westmorland* aforesaid to execute that office at any time after the aforesaid removal and discharge of him the said *Richard Baines* from his office aforesaid; and that the most noble *Thomas* earl of *Thanet* being keeper of the rolls of the peace of the lady the now queen in and for the county of *Westmorland* aforesaid in due manner assigned and constituted, to whom of right it belongs to name and appoint a clerk of the peace for the county of *Westmorland* aforesaid, after the removal and discharge of the aforesaid *Richard Baines* from the office of clerk of the peace for the county of *Westmorland* aforesaid, and before the coming of this writ, did name and appoint one

Thomas Carleton gent. to be clerk of the peace of the county aforesaid, the same Thomas Carleton being then a person able and sufficient, resiant in the said county of Westmorland, to execute the office aforesaid as long as he should well demean himself: and for this cause we the aforesaid keepers of the peace and justices as aforesaid within written cannot restore the aforesaid Richard Baines to the place and office of clerk of the peace for the county of Westmorland aforesaid, as by the aforesaid writ we are commanded.

N. See the report, which points out in what respects the order of the justices is holden to be bad, and so the return was ill.

Entered of Hilary *Term*, 3 Ann. B. R. Roll 169.

Dunn, who as well, &c. *against* Hinchdy. 2 Ld. Raym. 1275.

An action *qui tam*, &c. for making and selling buttons of wood only. 10 *W*. 3. *c*. 2.

Buckinghamshire, (to wit) GEORGE *Dunn* who sues as well for our lady the now queen as for himself in this behalf complains of *Joseph Hinchdy*, being in the custody of the marshal of the *Marshalsea* of the said lady the queen before the queen herself, of a plea that he render to the said lady the queen and to him the said *George*, who sues as well, &c. twenty-four pounds which he oweth to the said lady the queen and to the said *George*, who sues as well, &c. and unjustly detains, for that, to wit, That whereas the aforesaid *Joseph* after the 10th day of *February* in the year of our Lord 1698, to wit, on the 6th day of *June* in the 3d year of the reign of the said lady the now queen within this kingdom of *England*, to wit, at *Stony Stratford* in the county of *Bucks* aforesaid, did cause to be made and did sell twelve dozens of buttons of wood *only* and turned, in imitation of other buttons, contrary to the form of the statute in such case thereupon lately made and provided by which he the said *Joseph* according to the form of the statute in such case thereupon made and provided, hath forfeited to the said lady the queen and to him the said *George*, who sues as well, &c. forty shillings for every dozen thereof, in the whole amounting to the aforesaid 24 *l.* and thereupon an action hath accrued to the said lady the queen and to him the said *George*, who sues as well, &c. to require and have of the aforesaid *Joseph* the said 24 *l.* Nevertheless the aforesaid *Joseph* although often requested, hath not yet paid the aforesaid

ſaid 24 *l.* or any part thereof, to the ſaid lady the queen and him the ſaid *George*, who ſues as well, *&c.* or to either of them, but to pay the ſame to the ſaid lady the queen or to the ſaid *George*, who ſues as well, *&c.* hath hitherto wholly denied, and yet doth deny; whereupon he the ſaid *George*, who ſues as well for the ſaid lady the queen as for himſelf in this behalf ſays that he is injured, and hath ſuſtained damage to the value of thirty pounds, and thereupon he brings ſuit, *&c.*

N. B. Some of theſe declarations conclude thus: and thereupon he brings ſuit as well for the ſaid lady the queen as for himſelf, *&c.* But this is underſtood, and precedents are both ways. *Trin.* 13 *Ann. Walter* v. *Laughton B. R.* ſo reſolved that either way is good.

Trinity, 8 Ann. B. R.

Smith *againſt* Bowen. 2 Ld. Raym. 1289.

An appeal abated by the court, *ex officio*, becauſe the appellant being under age brought it in perſon.

BOWEN was tried and convicted at the *Old Bailey* of the murder of *William Smith*; *Geoage Smith* (an infant of 6 years old) the brother and heir of *William S.* brought an appeal in *proper perſon*, at the ſame ſeſſions *Bowen* was arraigned thereupon: the appeal being removed into the queen's bench, the court upon inſpection of the appellant ſaw he was an infant, and therefore the appeal being brought by him in proper perſon was erroneous; therefore they abated the appeal *ex officio*, and gave the appellant leave to file a new bill of appeal *by Guardian*, whereupon *Bowen* was arraigned *inſtanter*: and thereupon the following entry perufed and approved by Lord C. J. *Holt* was drawn up and entered on the roll of the firſt appeal, as of the firſt day of the term.

And now at this day, to wit, *Wedneſday* next after fifteen days of *Eaſter* in this ſame term before the lady the queen at *Weſtminſter* cometh *John Bowen*, in the cuſtody of the ſheriff of *Middleſex*, being brought into court here by virtue of a writ of the ſaid lady the queen of *habeas corpus* directed to the ſame ſheriff of *Middleſex*, and he is inſtantly committed to the cuſtody of the marſhal of the *Marſhalſea* of the ſaid lady the queen there to remain, *&c.* And the aforeſaid *George Smith* the brether and heir of the aforeſaid *William Smith* likewiſe cometh here in court in his proper perſon,

person, and thereupon, because by the inspection of the body of the said *George Smith* by the court of the said lady the queen here, it manifestly appears to the same court of the said queen here that the aforesaid *George Smith* at the time of the exhibiting of the aforesaid bill of appeal against the aforesaid *John Bowen* as before is set forth, was, and now is within the age of twenty and one years; and because the aforesaid *George Smith* (so being within the age of twenty and one years) hath prosecuted the aforesaid bill of appeal in his proper person, and not by his guardian or keeper, or next friend, against the aforesaid *John Bowen*, therefore it is considered by the court of the said lady the queen now here, that the aforesaid bill of appeal by the aforesaid *George Smith* so as aforesaid exhibited in his proper person be abated, &c. and that the aforesaid *George Smith* take nothing by his bill aforesaid, and that the aforesaid *John Bowen* go thereupon without day, &c.

Trinity *Term in the* 11*th Year of King* George.

The King *against* John Ward Esq. 2 Ld. Raym. 1461.

The Attorney General, by the Order of the House of Lords, filed the following Information against the Defendant.

An information by the attorney general for forgery.

Middlesex, (to wit) BE it remembered that *Philip Yorke* knt. attorney general of the lord the king, who prosecutes for the said lord the king in this behalf, in his proper person cometh here in the court of the said lord the king before the king himself at *Westminster* on *Wednesday* next after three weeks of the Holy *Trinity* in this same term, and for the said lord the king gives the court here to understand and be informed, that *John Ward* of *Hackney* in the county of *Middlesex* esq; being obliged to deliver three hundred and fifteen tons and one half of a ton of allum of the value of five thousand pounds to the most noble *Edmund* duke of the county of *Buckingham* and of *Normandy* at a certain day now past, he the said *John Ward* wickedly contriving and intending to deceive and defraud the aforesaid duke of the aforesaid allum, and with an iniquitous and fraudulent intention to avoid the delivery of the same allum, on the first day of *February* in the 11th year of the reign

reign of the lord *George* by the grace of God of *Great Britain*, *France* and *Ireland* king, defender of the faith, *&c.* at *Westminster* in the county of *Middlesex* with force and arms, *&c.* upon the backside of a certain certificate in writing signed with the hand of one *Ambrose Newton*, did falsely forge and counterfeit and cause to be forged and counterfeited a certain writing in the words and figures following, that is to say,

"*Schedule*

Tons.	C.
660 :	5
315 :	5
975 :	10

Mr. John Ward *I do hereby order you to charge the quantity of six hundred and sixty tons and one quarter of allum to my account, part of the quantity here mentioned in this certificate, and out of the money arising by the sale of allum in your hand pay to Mr.* W. Ward *and yourself ten pounds for every ton according to agreement; and for so doing this shall be your discharge.* Buckingham. April 30, 1706." To the evil example of all others delinquents in such case, to the grievous damage of the aforesaid duke, and against the peace of the said lord the now king, his crown and dignity. And the said attorney general of the lord the king, for the said lord the king further gives the court here to understand and be informed that the aforesaid *John Ward* being obliged to deliver three hundred and fifteen tons and one quarter of a ton of allum of the value of five thousand pounds to the aforesaid duke at a certain day now past, he the said *John Ward* wickedly contriving and intending to deceive and defraud the aforesaid duke of the aforesaid allum, and with an iniquitous and fraudulent intention to avoid the delivery of the same allum, afterwards, to wit, on the said first day of *February* in the abovesaid 11th year of the reign of the said lord the now king at *Westminster* in the county of *Middlesex* with force and arms, *&c.* a certain writing falsely forged and counterfeited on the backside of a certain certificate in writing signed with the hand of one *Ambrose Newton*, did wickedly, unlawfully and fraudulently publish and cause to be published, which said writing falsely forged and published followeth in these words and figures following, that is to say, [and then it is set out again] he the said *John Ward* then and there well knowing the said writing, by him the said *John Ward* as aforesaid published, to be false and counterfeited, to the great damage of the aforesaid duke, and against the peace of the said lord the now king, his crown and dignity, *&c.*

Entered

Entered of Mich. Term, 1 Geo. 2. N. 2.

The King *against* Sir Edmund Elwell, Joseph Billers Esq; and Daniel Monty Esq; 2 Ld. Raym. 1514.

A conviction of a forcible detainer upon view of 3 justices of peace,

which was removed by *Certiorari*,

and the bodies of defendants brought up by *hab. corpus*.

Kent, (to wit) BE it remembered that on the 15th day of *September* in the first year of the reign of our lord *George* the second by the grace of God of *Great Britain*, *France* and *Ireland* king, defender of the faith, &c. at *Beckenham* in the county of *Kent*, *Elizabeth Elwell* complains to us *E. B. P. B.* and *W. P.* three of the justices of the said lord the king assigned to keep the peace in and for the said county of *Kent*, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the said county, That *Edmund Elwell* late of *London*, bart. *J. B.* and *D. M.* did enter into the messuage of her the said *Elizabeth*, and being the mansion-house of her the said *Elizabeth Elwell* called *Langley-House*, situate within the parish of *Beckenham* aforesaid, and her the said *E. E.* out of her messuage aforesaid whereof she the said *E. E.* at the time of the entry aforesaid was seised as of the freehold of her the said *E. E.* for the term of her life, unlawfully ejected, expelled, amoved, and that messuage from her the said *Elizabeth* unlawfully with a strong hand, and an armed power, as yet hold and detain, contrary to the form of the statute in such case made and provided; whereupon she the said *E. E.* then, to wit, the same 11th day of *September* at the parish of *B.* aforesaid prays of us, being so justices as aforesaid, a fitting remedy to be applied to her in this behalf according to the form of the statute, &c. which said complaint and petition being heard by us the aforesaid justices, we the aforesaid *E. B.* bart. *P. B.* and *W. P.* the aforesaid justices, personally went to the messuage aforesaid, and then and there found and saw the aforesaid *E. E. J. B.* and *D. M.* detaining the aforesaid messuage with force and arms, unlawfully with a strong hand and an armed power, contrary to the form of the statute in such case made and provided, as she the said *Elizabeth Elwell* (as before is set forth) complains to us: therefore it is considered by us the aforesaid justices that the aforesaid *Edmund Elwell*, *Joseph Billers* and *Daniel Monty* are convicted, and each of them is convicted of the forcible detainer aforesaid upon our

own

own view then and there as aforesaid had, according to the form of the statute aforesaid; upon which we the aforesaid justices caused the aforesaid *E. E. J. B.* and *D. M.* then and there to be arrested: and they the said *E. E. J. B.* and *D. M.* being convicted, and each of them being convicted upon our own view of the forcible detainer aforesaid (as before is set forth) are committed, and each of them is committed by us the aforesaid justices to the gaol of the said lord the king of the county aforesaid at *Maidstone* in the county aforesaid, being the next gaol to the aforesaid messuage, there to remain until they shall make fine, and each of them shall make fine to the said lord the king for their respective offences aforesaid, of which said premisses abovesaid we have caused to be made this record. In witness whereof we the aforesaid *E. B.* bart. *P. B.* and *W. P.* esquires, the justices aforesaid, have set our hands and seals to this record at the parish of *Beckenham* aforesaid in the county of *Kent* aforesaid the said 15th day of *September* in the first year of the reign of the said lord the now king abovesaid.

E. Bettenson,
P. Burrell,
W. Passenger.

N. This conviction was held naught, and quashed, because the defendants were committed to lie in prison until they should pay their fine, and no fine was set, therefore see the report.

THE

THE

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Venire facias, and *Habeas Corpora Juratorum* awarded.

Verdict.

F I N I S.